CORPORATE CONSOLIDATION OF RENTAL HOUSING & THE CASE FOR NATIONAL RENT STABILIZATION

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ABSTRACT

Rental housing in the United States is increasingly owned by corporate landlords that operate under a different set of incentives, behind a level of anonymity previously unavailable, and pursuant to practices that often exacerbate an already precarious housing landscape for tenants. Market-sensitive and nuanced rent stabilization laws have reemerged at the state and local level as a viable policy option to help regulate escalating rents and prevent tenant displacement. These laws, when well drafted, can address outdated critiques of strict rent caps and can complement alternative approaches, like those of the politically popular Yes In My Backyard (YIMBY) movement, which advocates for reducing regulatory barriers to new housing development.

While historically the province of state and local governments, this Essay argues that there is a robust role—on both the legislative and executive fronts—for federal involvement in the implementation of rent stabilization nationwide. The Essay critiques the recently released White House Blueprint for a Tenant Bill of Rights as largely illusory, examines historical precedent for congressional authorization of rent regulation and, short of action by Congress, considers how the President could leverage federal financial assistance and fair housing law to provide incentives for states and localities to pass rent stabilization laws.

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INTRODUCTION

The nature of rental housing ownership in the United States is changing. The increasing control of this segment of the housing stock by corporate owners holds the potential for dramatic upheaval in a market that literally touches home for more than a third of all households.[1] Early evidence of such disruption is already emerging—for example, some studies have found that corporate landlords are more likely to evict tenants.[2] Reports of steep rent increases, tenant harassment, deferred maintenance, and excessive fees are proliferating.[3] Algorithm-based rent setting through the use of software deployed by many large corporate owners has raised concerns about further escalating rents and even price fixing.[4]

Modern landlords increasingly act behind a veil of anonymity to a degree unseen prior to the past few decades through the use of vehicles like limited

1. According to Census Bureau data released in 2022, 45,991,000 of the nation's 128,504,000 housing properties (35.8 percent) are rentals. *American Housing Survey*, U.S. DEP'T OF HOUS. & URB. DEV. & U.S. CENSUS BUREAU (Sept. 29, 2022), https://www.census.gov/programs-surveys/ahs/data/interactive/ahstablecreator.html?s_areas=00000&s_year=2021&s_tablename=TABLE1&s_bygroup1=2&s_bygroup2=1&s_filtergroup1=1&s_filtergroup2=1 [https://perma.cc/MZX3-6LQ4]; *see also* Drew DeSilver, *As National Eviction Ban Expires, A Look at Who Rents and Who Owns in the U.S.*, PEW RSCH. CTR. (Aug. 2, 2021), https://www.pewresearch.org/fact-tank/2021/08/02/as-national-eviction-ban-expires-a-look-at-who-rents-and-who-owns-in-the-u-s/ [https://perma.cc/Y2PV-B8WF].

2. *See infra* Part I.B.

3. *See infra* Part I.B.

4. *See* Heather Vogell, Haru Coryne & Ryan Little, *Rent Going Up? One Company's Algorithm Could Be Why.*, PROPUBLICA (Oct. 15, 2022, 5:00 AM), https://www.propublica.org/article/yieldstar-rent-increase-realpage-rent [https://perma.cc/A5U3-VTV6] (noting critics of rent-setting software critique the technology for allowing rival landlords to view and discuss the algorithm's recommended rents, potentially enabling collusion that leads to artificially inflated prices).

liability companies (LLCs).[5] Such anonymity turns on its head centuries of assumptions baked into the U.S. property law system, and in particular the land records system, regarding the ability to determine true ownership of real property.[6] As such, it has become more difficult to hold accountable the actual human beings responsible for decisions that play such a critical role in determining housing outcomes for millions of households.[7]

Of course, serious issues of housing insecurity predate the recent rise in corporate rental ownership and would exist regardless of this modern trend. Severe rent burdens have long threatened the ability of many to afford basic necessities like food, healthcare, and transportation.[8] Evictions, which occur in the United States disproportionately for nonpayment of rent, have gained widespread attention as a key perpetuator of poverty.[9] The growth of corporate landlords is only exacerbating these long-standing problems.

A chorus has emerged in recent years arguing for the central importance of new housing development in solving issues of unaffordability. The YIMBY (Yes In My Backyard) movement has united advocates across the political and social spectrum—from libertarian-leaning real estate developers to certain progressive low-income housing advocates—in the belief that overly cumbersome land use restrictions, especially in the most expensive urban metropolitan areas, are primarily to blame for escalating housing affordability challenges.[10] Were it easier to build new housing, they

5. Brian Mykulyn & Elora Raymond, *When Landlords Hide Behind LLCs*, SHELTERFORCE (Aug. 23, 2022), https://shelterforce.org/2022/08/23/when-landlords-hide-behind-llcs/ [https://perma.cc/7KJY-YEWW] (detailing the 7 percentage point rise in ownership of rental units by non-individual investors—including LLCs—between 2001 and 2015).

6. *See* K-Sue Park, *Property and Sovereignty in America: A History of Title Registries & Jurisdictional Power*, 133 YALE L.J. (forthcoming 2023), https://papers.ssrn.com/sol3/papers.cfm?abstract_id=4374259 [https://perma.cc/M68M-XH9D].

7. Mykulyn & Raymond, *supra* note 5 (outlining how most states require LLCs to register an agent with the government to receive legal notices but do not mandate the entities identify the beneficial owners of the real estate investment, with the resulting anonymity making it "difficult for cities to direct their limited resources to address problematic owners—or even to identify crimes like money laundering").

8. JOINT CTR. FOR HOUS. STUD. OF HARV. UNIV., AMERICA'S RENTAL HOUSING 2022, at 4 (2022) [hereinafter AMERICA'S RENTAL HOUSING 2022], https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2022.pdf [https://perma.cc/5996-STJK] (explaining that while the median renter household in 2019 had $2,400 left over each month to cover non-housing expenses, cost-burdened families with incomes below $30,000 had only $360 remaining to spend on other basic needs).

9. *See* Emily Peiffer, *Why We Need to Stop Evictions Before They Happen*, URB. INST.: HOUS. MATTERS (July 25, 2018), https://housingmatters.urban.org/feature/why-we-need-stop-evictions-they-happen [https://perma.cc/QYA7-3MXR] ("Attention around evictions has grown largely because of the work of Matthew Desmond, author of *Evicted: Poverty and Profit in the American City* and founder of the Eviction Lab, a team that created the first national dataset of court eviction filings and judgments dating back to 2000.").

10. *See* Edward Glaeser, *Reforming Land Use Regulations*, BROOKINGS INST. (Apr. 24, 2017), https://www.brookings.edu/research/reforming-land-use-regulations/ [https://perma.cc/4BXM-UVHJ]

argue, increased supply would reduce prices and new high-end market rate development would open up housing options all the way down the income ladder.[11]

Perhaps less prominent than the YIMBY movement has been the rise, or rather reincarnation, in recent years of a parallel policy intervention with a different approach: namely, that of rent stabilization.[12] Recent local and statewide campaigns have revived rent stabilization as a tool to address escalating rents and the harmful effects of eviction.[13] In the November 2022

(characterizing land-use controls as "mak[ing] housing more expensive and restrict[ing] the growth of America's most successful metropolitan areas" and noting that "[p]laces that are expensive don't build a lot and places that build a lot aren't expensive"); JENNY SCHUETZ, FIXER-UPPER: HOW TO REPAIR AMERICA'S BROKEN HOUSING SYSTEMS 164 (2022) (positing that keeping the YIMBY movement unaffiliated with either political party enables policymakers to push for zoning reform "based on economic efficiency, racial equity, or climate benefits, depending on target audiences"); Anika Singh Lemar, *The Role of States in Liberalizing Land Use Regulations*, 97 N.C. L. REV. 293, 297–98 (2019) (describing a white paper published by the Obama Administration in late 2016 blaming local land-use barriers for housing markets' inability to respond to growing demand, a position subsequently embraced by the economist behind President Trump's housing policy); M. Nolan Gray, *Cancel Zoning*, ATLANTIC (June 21, 2022), https://www.theatlantic.com/ideas/archive/2022/06/zoning-housing-affordability-nimby-parking-houston/661289/ [https://perma.cc/2FZA-BZSA] (ascribing the rising cost of housing as the problem caused or exacerbated by zoning that has received the most attention); Christine Mai-Duc, *Yimby Movement Goes Mainstream in Response to High Housing Costs*, WALL ST. J. (Apr. 20, 2022, 12:49 AM), https://www.wsj.com/articles/yimby-movement-goes-mainstream-in-response-to-high-housing-costs-11650373200 [https://perma.cc/JQ5R-KSSP] (highlighting the YIMBY belief that the way to best reduce home prices and homelessness is by making it easier to build housing); Cassidy Pearson & Jenny Schuetz, *Where Pro-Housing Groups Are Emerging*, BROOKINGS INST. (Mar. 31, 2022), https://www.brookings.edu/blog/the-avenue/2022/03/31/where-pro-housing-groups-are-emerging/ [https://perma.cc/AL7P-UBCE] (concluding that more than 140 YIMBY pro-housing initiatives existed in 29 states as of January 2022); Alana Semuels, *From 'Not in My Backyard' to 'Yes in My Backyard,'* ATLANTIC (July 5, 2017), https://www.theatlantic.com/business/archive/2017/07/yimby-groups-pro-development/532437/ [https://perma.cc/K25H-F357] (noting the adversarial relationship between real estate developers and progressive residents has given way to greater cooperation in many cities, with both sides encouraging local governments to allow for additional housing construction).

11. *See, e.g.*, Jay Caspian Kang, *Want to Solve the Housing Crisis? Build More, and Build Higher*, N.Y. TIMES (Sept. 2, 2021), https://www.nytimes.com/2021/ 09/02/opinion/housing-crisis-pandemic.html [https://perma.cc/K2ML-AZRB] ("Trickle-down housing, much like trickle-down economics, argues that if you build more housing for the upper middle class and wealthy, that will create vacancies for the middle class and poor to fill at cheaper prices.").

12. *See* Derek Wells, Note, *The Price of Diversity: Rent Control and Desegregation of Urban Areas*, 55 SUFFOLK U. L. REV. 155, 172–73, 176–77 (2022) (explaining that while rent control is not widespread at the moment, some municipalities and states have recently adopted the measure, with lawmakers elsewhere introducing bills to undo bans on the practice). "Rent control" and "rent stabilization," often used interchangeably, generally refer to a set of policies aimed at limiting the degree to which a landlord can increase rents, at least during the term of a single tenancy. "Rent control" traditionally has been used more, though not exclusively, to describe hard rent caps, whereas "rent stabilization" has more commonly been used in policies that allow for annual inflation-based rent adjustments. *See* Stephanie M. Stern, *Rent Control Sharing*, 13 LAW & ETHICS HUM. RTS. 141, 144–46 (2019) (tracing the history of rent stabilization in the United States).

13. *See, e.g.*, Virginia Sargent, Comment, *Let Cities Decide: End Colorado's Prohibition on Rent Regulation*, 92 U. COLO. L. REV. 337, 346 (2021) (noting that Oregon and California became the first states to enact statewide rent regulation in 2019, with other jurisdictions—including Maryland, New

midterm elections, a number of U.S. localities passed new rent stabilization laws.[14]

In the same month, a coalition of dozens of tenant organizations from around the United States presented the Biden Administration with a draft executive order that would impose rent stabilization on certain federally assisted properties and deploy mechanisms for incentivizing the policy's use more broadly.[15] In January 2023, the Administration responded with The White House Blueprint for a Renters Bill of Rights—a mostly aspirational document calling primarily for additional process.[16] On the federal legislative front, U.S. Representative Jamaal Bowman introduced the Emergency Price Stabilization Act, which would authorize the President to implement price controls and regulations on a number of goods, including housing, for a limited time.[17]

Jersey, and New York—expressly allowing rent regulation at the municipal level). In 2021, citizens in both Minneapolis and St. Paul voted in favor of various rent control measures, and the Illinois House of Representatives Housing Committee advanced a bill to overturn the Illinois Rent Control Preemption Act, which has barred rent control in the state since 1997. *See* Max Nesterak, *What Will Minneapolis' Rent Control Policy Look Like?*, MINN. REFORMER (Nov. 5, 2021, 6:45 AM), https://minnesotareformer.com/2021/11/05/what-will-minneapolis-rent-control-policy-look-like/ [https://perma.cc/C5M9-LKYR]; Edward McClelland, *Rent Control Gets a New Lease on Life in Illinois*, CHI. MAG. (Apr. 1, 2021, 9:00 AM), https://www.chicagomag.com/news/rent-control-gets-a-new-lease-on-life-in-illinois/ [https://perma.cc/M398-M4H8]. Likewise, Boston residents elected Michelle Wu as mayor after she campaigned on a pro-rent control platform. Kriston Capps, *As Housing Costs Spike, Voters Look for Hope in Rent Control*, BLOOMBERG (Nov. 4, 2021, 8:47 AM), https://www.bloomberg.com/news/articles/2021-11-04/rent-control-scored-a-big-election-night-victory [https://perma.cc/89SV-KQNT].

14. Janie Har, *Rent Stabilization Measures Win in US Midterm Election*, AP NEWS (Nov. 15, 2022), https://apnews.com/article/2022-midterm-elections-inflation-florida-california-ef325d98687bbc08f2900b230a155852 [https://perma.cc/CGU6-QRDV] (detailing the caps on rent increases approved by voters in cities in Maine, California, and Florida).

15. Katy O'Donnell, *White House Urged to Cap Rent at Fannie, Freddie-Backed Properties*, POLITICO PRO (Nov. 4, 2022, 1:25 PM), https://subscriber.politicopro.com/article/2022/11/ housing-groups-push-white-house-to-cap-rent-00065171 [https://perma.cc/4UHF-6CXG]; *see also* Meir Rinde, *Biden Has Power to Impose Rent Control, Say Housing Advocates*, SHELTERFORCE (Sept. 1, 2022), https://shelterforce.org/2022/09/01/biden-has-power-to-impose-rent-control-say-housing-advocates/ [https://perma.cc/3VF9-U9CA].

16. Press Release, White House, FACT SHEET: Biden-Harris Administration Announces New Actions to Protect Renters and Promote Rental Affordability (Jan. 25, 2023), https://www.whitehouse.gov/briefing-room/statements-releases/2023/01/25/fact-sheet-biden-harris-administration-announces-new-actions-to-protect-renters-and-promote-rental-affordability/ [https://perma.cc/DY5L-AC8Y]. Prepared by President Biden's Domestic Policy Council and National Economic Council, the white paper is a non-binding statement of principles designed to promote greater fairness in the rental housing market, arguing for increased renter access to affordable housing, clear and fair leases, Fair Housing Act protection, the right to organize, and eviction prevention measures. *See* DOMESTIC POL'Y COUNCIL & NAT'L ECON. COUNCIL, THE WHITE HOUSE BLUEPRINT FOR A RENTERS BILL OF RIGHTS 2–4 (2023) [hereinafter WHITE HOUSE BLUEPRINT], https://www.whitehouse.gov/wp-content/uploads/2023/01/White-House-Blueprint-for-a-Renters-Bill-of-Rights.pdf [https://perma.cc/J26C-NE9D]. See *infra* Part III.B.2 for further discussion.

17. Emergency Price Stabilization Act of 2022, H.R. 8658, 117th Cong. (2022); Press Release, Jamaal Bowman, Congressman, NEWS: Rep. Jamaal Bowman Introduces Emergency Price Stabilization Act (Aug. 4, 2022), https://bowman.house.gov/2022/8/news-rep-jamaal-bowman-introduces-emergency-price-stabilization-act [https://perma.cc/C6EG-PM3T].

These efforts have run into all the classic critiques of housing price controls: that such policies will lead to disinvestment, abandonment, tenant harassment, a diminished supply of housing, higher rents for everyone, and, ultimately, will hurt those they are intended to help.[18] At a recent congressional hearing, U.S. Representative Blaine Luetkemeyer quoted American economist Walter Williams: "Short of aerial bombardment, the best way to destroy a city is through rent controls."[19] This notwithstanding the fact that modern economists are far from united in disapproval of all rent regulation—in July 2023, thirty-two economists sent a letter to the Federal Housing Finance Agency in response to a request for information, urging the agency to implement basic rent regulations and tenant protections for the large number of U.S. rental properties with a government-backed mortgage.[20]

Such classic critiques, while dramatic, often lack nuance. They regularly take aim at an outdated conception of standalone rent caps.[21] Modern rent stabilization and tenant protection ordinances, by contrast, frequently consist of a robust package of land use tools that are sensitive to issues of market incentives and signals.[22] Such critiques also frequently ignore political economy realities and elevate theoretical market efficiency above more practical, and difficult, questions of distributional tradeoffs and societal values.[23]

Rent stabilization ordinances thus far largely have been pursued at the state and, more frequently, local levels. The majority of states, however, continue to preempt localities from passing such laws. This Essay considers the question of what role, if any, the federal government might play in promoting rent stabilization nationally. In May 2022, President Biden

18. *See, e.g.*, EDWARD L. GLAESER & JOSEPH GYOURKO, RETHINKING FEDERAL HOUSING POLICY: HOW TO MAKE HOUSING PLENTIFUL AND AFFORDABLE 60 (2008) (arguing that a reduction in rents diminishes the overall size of the local housing supply, which in turn "ensure[s] less building of rental properties and more conversions of the rental stock to owner-occupied condominiums").

19. U.S. House Committee on Financial Services, *Boom and Bust: The Need for Bold Investments in Fair and Affordable Housing to Combat Inflation*, YOUTUBE (Dec. 1, 2022), https://www.youtube.com/watch?v=EuuQAw5fsTY [https://perma.cc/Z3HY-YKTU] (1:17:07).

20. Letter from Economists to the Honorable Sandra Thompson, Director, Fed. Hous. Fin. Agency (July 28, 2023), https://peoplesaction.org/wp-content/uploads/2023/07/Economist-Sign-on-Letter_-FHFA-RFI-Response-1.pdf [https://perma.cc/H8HK-KB7J]. Seventeen United States senators sent a letter similarly requesting rent regulations. *See* Letter from U.S. Senators to the Honorable Sandra Thompson, Director, Fed. Hous. Fin. Agency (July 31, 2023), https://static.politico.com/6f/de/3713f9814041ab2bf60cd225899c/7-31-dems-fhfa-rfi.pdf?source=email [https://perma.cc/XS77-C6J4] (including Senators Sherrod Brown, Tim Kaine, Jack Reed, Mark Warner, John Fetterman, Richard Blumenthal, Elizabeth Warren, Edward Markey, Alex Padilla, Patty Murray, Sheldon Whitehouse, Robert Casey, Bernard Sanders, Brian Schatz, Catherine Masto, Tammy Duckworth, and Chris Van Hollen).

21. See *infra* Part II.B for a discussion of the classic critique and responses.

22. *See infra* Part II.B.

23. *See infra* Part II.B.

released a Housing Supply Action Plan, a YIMBY-inspired set of incentives and financing tools to help bolster new housing production.[24] What might similar executive action look like with respect to promoting rent stabilization and tenant protections? Alternatively, does Congress have the power to enact such policies nationwide or to authorize the President to do so?

This Essay takes up these questions in the following manner: Part I considers how the rise of corporate ownership of rental housing is impacting the market and upending traditional assumptions of landlord tenant law. In particular, the unprecedented scale, anonymous nature, diversified ownership structure, and adverse behavior of such owners warrants rethinking the balance of protections afforded to tenants. This Part also reviews how this trend exacerbates underlying structural housing security challenges.

Part II evaluates the YIMBY movement and argues that new market-rate development alone, while helpful, will not fully address the problems described in Part I, nor will income supports like a higher minimum wage or universal basic income. Rather, non-market-contingent property right allocations, like those embodied in well-crafted rent stabilization laws, should be viewed as a complementary approach that can help balance a number of competing interests among landlords, tenants, and society writ large. This Part also considers various critiques of rent stabilization and suggests how modern campaigns can respond with a carefully tailored package of land use tools that, for example, provide for reasonable dividends to owners, cost recoupment for maintenance and rehabilitation expenditures, and certain exemptions for new construction and particular hardships.

Part III reviews the current status of rent stabilization at the state and local level, as well as advocacy efforts at the national level. It also evaluates the legal avenues for federal intervention and concludes that there is significant legal authority and precedent for both legislative and executive action. Congress has the constitutional power to authorize the President to implement housing price controls pursuant to certain standards—something it has done multiple times historically, with endorsement by the U.S. Supreme Court. Short of action by Congress, and more practically given

24. Press Release, White House, President Biden Announces New Actions to Ease the Burden of Housing Costs (May 16, 2022) [hereinafter 2022 Housing Supply Action Plan], https://www.whitehouse.gov/briefing-room/statements-releases/2022/05/16/president-biden-announces-new-actions-to-ease-the-burden-of-housing-costs/ [https://perma.cc/W8CJ-BT4N]. To further the Housing Supply Action Plan, the Biden Administration intends to reward jurisdictions with reformed zoning and land-use policies when considered for certain federal grants, develop new financing mechanisms to generate more housing where financing gaps exist, improve existing forms of federal financing, and ensure fewer government-owned homes end up in the hands of large institutional investors. *Id.*

current political realities, the Biden Administration could leverage state and local funding mechanisms and existing legal authority, such as the "affirmatively furthering fair housing" provision of the federal Fair Housing Act, to incentivize states and local governments to implement basic rent stabilization and tenant protections. Such a policy intervention, while imperfect and still allowing for some regional variation, would help ensure that all rental housing in the United States affords its residents a baseline level of security.

I. BACKGROUND

A. Corporate Acquisition of Rental Housing

Ownership of the nation's rental housing stock is in transition. The approximately twenty million rental properties in the United States, and fifty million rental units within those properties, have been steadily shifting from individual to corporate hands.[25] According to the most recent 2021 Rental Housing Finance Survey data, the percentage of rental *properties* owned by individuals dropped by 8 percentage points over the last six years alone, from approximately 78 percent to just under 70 percent, reflecting a decline of more than 3.4 million properties.[26] This is a stark change from 1991, when individuals owned 92 percent of all rental properties.[27] Similarly, the percentage of *units* owned by individuals dropped from 48 percent to 37 percent over the same six-year period, a decline of over 4.5 million units.[28]

Corporate ownership of rental housing has tended to skew toward larger properties—in 2021, individuals owned only 6 percent of properties with 50 or more units.[29] Mid-sized properties however are increasingly owned by corporate landlords as well. According to Harvard's Joint Center for

25. Between 2015 and 2021, the number of rental properties owned by limited partnerships, limited liability partnerships, and limited liability corporations *increased* by 4 percent, while the overall size of the nation's rental stock *decreased* by 12 percent. *See Rental Housing Finance Survey*, U.S. DEP'T OF HOUS. & URB. DEV. & U.S. CENSUS BUREAU (Nov. 29, 2022), https://www.census.gov/data-tools/demo/rhfs/#/?s_tableName=TABLE2 [https://perma.cc/6DWS-UA7D]. New housing construction sharply decreased beginning in the months leading up to the Great Recession and did not reach pre-Recession heights again until 2020. *See* Ashfaq Khan, Christian E. Weller, Lily Roberts & Michela Zonta, *The Rental Housing Crisis Is a Supply Problem That Needs Supply Solutions*, CTR. FOR AM. PROGRESS (Aug. 22, 2022), https://www.americanprogress.org/article/the-rental-housing-crisis-is-a-supply-problem-that-needs-supply-solutions/ [https://perma.cc/J34P-CN8C].

26. *See Rental Housing Finance Survey*, *supra* note 25.

27. *See* Emily Badger, *Anonymous Owner, L.L.C.: Why It Has Become So Easy to Hide in the Housing Market*, N.Y. TIMES (Apr. 30, 2018), https://www.nytimes.com/2018/04/30/upshot/anonymous-owner-llc-why-it-has-become-so-easy-to-hide-in-the-housing-market.html [https://perma.cc/HU87-YSR5].

28. *See Rental Housing Finance Survey*, *supra* note 25.

29. *Id.*

Housing Studies, between 2001 and 2015 the percentage of mid-sized apartment properties owned by individuals decreased from approximately 67 percent to 40 percent.[30]

Perhaps most noteworthy, however, is the ongoing transformation of the market for single-family home rentals. In the wake of the Great Recession and the ensuing foreclosure crisis, the United States saw a 5 percent drop in homeownership.[31] During this period, large institutional investors made an unprecedented incursion into the market—between 2011 and 2013 alone, institutional investors and hedge funds acquired approximately 350,000 bank-owned single-family homes.[32]

Consolidation of properties by several high-profile firms resulted in massive portfolios previously unseen in the single-family housing market. In 2011, no U.S. investor owned more than 1,000 such homes.[33] Invitation Homes, a subsidiary of Blackstone, demonstrates how the market changed. At its peak, the firm owned 82,500 single-family homes.[34] Across the rental market more broadly, private equity became a leading form of financing among the owners of the largest portfolios of rental housing. In 2011, approximately one-third of the thirty-five largest owners were backed by private equity—a decade later, this share had increased to roughly half.[35]

The federal government played a significant role in providing incentives and structuring transactions to facilitate the transfer of government- and bank-owned properties to investors who could convert troubled properties into single-family rentals.[36] This included indirect assistance by helping to

30. JOINT CTR. FOR HOUS. STUD. OF HARV. UNIV., AMERICA'S RENTAL HOUSING 2020, at 4 (2020) [hereinafter AMERICA'S RENTAL HOUSING 2020], https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_Americas_Rental_Housing_2020.pdf [https://perma.cc/T6F8-8WZG] (noting that while individual ownership of rental properties decreased among buildings of all sizes during the period, those with between five and twenty-four units were the most attractive to institutional investors, as old age and relatively low rents made them "prime candidates for purchase and upgrading").

31. Elora Lee Raymond, Richard Duckworth, Benjamin Miller, Michael Lucas & Shiraj Pokharel, *From Foreclosure to Eviction: Housing Insecurity in Corporate-Owned Single-Family Rentals*, 20 CITYSCAPE 159, 160 (2018).

32. *Id.* at 161.

33. MAJORITY STAFF OF H. COMM. ON FIN. SERVS., 117TH CONG., MEMORANDUM 1 (Comm. Print 2022), https://financialservices.house.gov/uploadedfiles/hhrg-117-ba09-20220628-sd002.pdf [https://perma.cc/KT8R-ATYN] (previewing the June 28, 2022, Subcommittee on Oversight & Investigations hearing entitled, "Where Have All the Houses Gone? Private Equity, Single Family Rentals, and America's Neighborhoods").

34. Francesca Mari, *A $60 Billion Housing Grab by Wall Street*, N.Y. TIMES MAG. (Oct. 22, 2021), https://www.nytimes.com/2020/03/04/magazine/wall-street-landlords.html [https://perma.cc/H4CW-3BE6].

35. Heather Vogell, *When Private Equity Becomes Your Landlord*, PROPUBLICA (Feb. 7, 2022, 10:25 AM), https://www.propublica.org/article/when-private-equity-becomes-your-landlord [https://perma.cc/S4K7-H7DW].

36. *See* Raymond et al., *supra* note 31, at 160–61.

connect large single-family home purchasers with capital markets.[37] It also took the form of direct assistance—as one particularly notable example, in 2017, Fannie Mae provided a guarantee on a one billion dollar loan to Invitation Homes.[38] Freddie Mac also provided significant financial assistance to support private equity's acquisition of rental housing.[39]

Investor acquisition of single-family homes for conversion to rentals did not stop in the immediate wake of the Great Recession. Investors purchased 28 percent of all single-family homes sold in the first quarter of 2022.[40] Investors also increasingly use aggressive tactics to buy up subsidized housing in desirable locations with the intent of converting it to market-rate housing upon the expiration of rent restrictions.[41] If such trends continue, all signs point to a future in which an increasingly large share of tenants live in homes owned by corporate landlords.

B. A Different Kind of Landlord

Corporate landlords often operate under a different set of incentives, expectations, and pressures than individual landlords. Private equity firms, for example, commonly promise double-digit returns to investors over limited time horizons.[42] This results in pressure to rapidly increase the profits from acquired assets through cutting costs or raising revenues. In the context of housing, large corporate landlords in some instances can achieve cost savings by introducing economies of scale or cost-saving technologies.[43]

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37. *Id.* at 164.

38. *Id.* at 165.

39. *Id.*; *see also* Vogell, *supra* note 35 (concluding that of Freddie Mac's twenty biggest deals financing apartment complex purchases by a single borrower, transactions involving large private equity firms accounted for 85 percent, with all but one occurring between 2015 and 2022).

40. JOINT CTR. FOR HOUS. STUD. OF HARV. UNIV., THE STATE OF THE NATION'S HOUSING 2022, at 2 (2022) [hereinafter THE STATE OF THE NATION'S HOUSING 2022], https://www.jchs.harvard.edu/sites/default/files/reports/files/Harvard_JCHS_State_Nations_Housing_2022.pdf [https://perma.cc/R99X-MSR5].

41. *See* Brandon M. Weiss, *Clarifying Nonprofit Purchase Rights in Affordable Housing*, 48 FORDHAM URB. L.J. 1159, 1168–69 (2021) (describing pressure tactics used by investors to buy out the original parties in nonprofit-developed LIHTC partnerships as those projects approach the end of their fifteen-year restricted use terms).

42. *See* Mari, *supra* note 34 (explaining that the creation of single-family rental securitization allowed private equity firms to borrow greater amounts of credit to achieve substantial accelerated returns following the Great Recession).

43. *See* DESIREE FIELDS & MANON VERGERIO, CORPORATE LANDLORDS AND MARKET POWER 3, 38 (2022), https://escholarship.org/uc/item/07d6445s [https://perma.cc/SVC3-G6FE] (describing corporate landlords' efforts to reduce costs by relying on technology to acquire properties, screen tenants, and enable self-showings and virtual tours); Desiree Fields, *Automated Landlord: Digital Technologies and Post-Crisis Financial Accumulation*, 54 ENV'T & PLAN. A: ECON. & SPACE 160, 162 (2022) (arguing that advances in digital technology have bolstered the powers of the "automated

Evidence is accruing, however, that corporate landlords, and particularly large corporate landlords, frequently deploy alternative mechanisms to increase profits.[44] One study from the Atlanta area found large corporate landlords to be 68 percent more likely than smaller landlords to file eviction notices.[45] Another study from Boston found landlords who own fifteen or more units to be two to three times more likely to evict tenants than landlords who own fewer than four units.[46] A study of 400,000 eviction

landlord," helping corporate entities manage their properties at scale because of greater efficiencies); Lynne B. Sagalyn, *The Halting Consolidation Revolution*, 6 WHARTON REAL EST. REV. 18, 18 (2002) (describing the theory that a corporate takeover of the real estate industry was "inevitable (if not unstoppable) because long-term comparative advantages would accrue to those players operating with the lowest cost of capital, best access to capital, and most efficient operations based on cost economies of scale relative to competitors.").

44. Not all corporate landlords are large—some of the recent growth in LLC ownership, for example, is likely driven by individual "mom and pop" landlords simply formalizing the structure in which they hold their assets. *See* Andrew Messamore, The Institutionalization of Landlording: Assessing Transformations in Property Ownership Since the Great Recession (June 19, 2023) (unpublished manuscript), https://ssrn.com/abstract=4480068 [https://perma.cc/4MQX-S5MB]. Unfortunately, the very anonymity that makes it difficult for tenants to discern true beneficial ownership of their properties also makes it difficult for researchers to systemically determine, for example, whether a particular LLC that owns one rental property is controlled by individuals with investments in entities that own other such properties. As such, there is no national dataset that disaggregates, for example, true beneficial owners by total number of rental units. Much of the research in the area thus far has tended to be local, with individual researchers cobbling together data from a variety of national, state, and local sources and defining variables in ways suited to the available data (e.g., "sole proprietorship" vs. "shell company" vs. "other company," or "small landlords (<15 [single family] properties)" vs. "large landlords (excluding institutional investors)" vs. "institutional investors").

45. *See* Raymond et al., *supra* note 31, at 162; *see also* Dan Immergluck, Jeff Ernsthausen, Stephanie Earl & Allison Powell, *Evictions, Large Owners, and Serial Filings: Findings from Atlanta*, 35 HOUS. STUD. 903 (2020) (similarly studying Atlanta and finding that the largest owners and the largest properties saw the highest shares of serial eviction filings); Eric Seymour & Joshua Akers, *"Our Customer Is America": Housing Insecurity and Eviction in Las Vegas, Nevada's Postcrisis Rental Markets*, 31 HOUS. POL'Y DEBATE 516, 516 (2021) (concluding institutional investors in single-family rentals in Las Vegas exhibit higher rates of eviction, especially among those expanding existing portfolios of rental properties).

46. Henry Gomory, *The Social and Institutional Contexts Underlying Landlords' Eviction Practices*, 100 SOC. FORCES 1774, 1798 (2021) ("This study finds that large-scale landlords file and execute evictions at dramatically higher rates than small landlords. . . . [L]arge owners file evictions over less owed rent, suggesting that they file more even controlling for tenant behavior. Small and large landlords differ not only quantitatively in their rates of eviction, but qualitatively in the purposes for which they use eviction. Large landlords more often file over missed rent (as opposed to other lease violations), are more likely to resolve filings without execution, and are more likely to file repeatedly against the same tenants, all of which imply that they use filings as a form of rent collection and tenant discipline . . . . These differences in eviction behaviors appear to derive from small and large landlords' organizational structures and relationships with tenants, more so than from their economic positions. . . . [W]hen I indirectly test the importance of formal organizational structures using third-party property managers and landlords' legal entities, I find these markers of formalization are associated with the eviction practices of large-scale landlords. Finally, measures of landlords' economic precarity are not significantly associated with eviction outcomes, suggesting these characteristics are less determinative of landlord behavior. Taken together, these findings suggest large landlords' eviction practices stem from formal organizational structures that bureaucratize management decisions and businesslike relationships with tenants that discourage social closeness. Both practices facilitate an understanding of

cases in Kentucky found larger landlords to be less sensitive to eviction-related transaction costs and "nearly twice as likely to proceed toward a final eviction judgment as smaller landlords."[47] The largest institutional landlords filed for high rates of evictions each year, including at least one such landlord that filed for eviction against as many as a third of its tenants in a single year.[48] The process of replacing current tenants with higher paying ones has come to be known in the industry as "re-tenanting."[49] Other tactics reportedly deployed by such landlords involve sharp rent increases,[50] tenant harassment,[51] deferred maintenance,[52] deception regarding tenant rights under the federal eviction moratorium,[53] and excessive fees.[54]

Of course, tenant complaints regarding issues like steep rent increases and poor housing conditions predate the recent rise in corporate ownership. And not all studies are unanimous in finding that large corporate landlords

landlording in which profit is placed over social considerations like a tenant's well-being, even making those considerations feel inappropriate." (internal citation omitted)). While not necessarily certain in all cases, it seems relatively safe to assume that, in general, larger landlords (as typically defined by inventory size) are more likely than smaller landlords to hold their assets in a corporate form rather than in an individual capacity (for reasons including liability protection, better access to counsel, and incorporation costs).

47. Christopher J. Ryan, Jr. & Cassie Chambers Armstrong, *Corporate and Coasean Landlords: Evidence from Kentucky* (unpublished abstract) (on file with author).

48. ELORA RAYMOND, RICHARD DUCKWORTH, BEN MILLER, MICHAEL LUCAS & SHIRAJ POKHAREL, FED. RSRV. BANK OF ATLANTA, CORPORATE LANDLORDS, INSTITUTIONAL INVESTORS, AND DISPLACEMENT: EVICTION RATES IN SINGLE-FAMILY RENTALS 1 (2016), https://ssrn.com/abstract=2893552 [https://perma.cc/YW7Y-898P].

49. *See* Vogell, *supra* note 35.

50. *See* Sam Gilman, *The Return on Investment of Pandemic Rental Assistance: Modeling a Rare Win-Win-Win*, 18 IND. HEALTH L. REV. 293, 308 (2021); Danielle D'Onfro, *Companies as Commodities*, 48 FLA. ST. U. L. REV. 1, 32, 32 n.158 (2021); Nisha N. Vyas & Matthew Warren, *From Commodities to Communities: Reimagining Housing After the Pandemic*, 68 UCLA L. REV. DISCOURSE 190, 199 (2020); *see also* Irina Ivanova, *Corporate Landlords' Profits Have Surged Despite Eviction Ban Fears*, CBS NEWS (June 7, 2022, 11:23 AM), https://www.cbsnews.com/news/rent-apartment-housing-price-landlords-profits-eviction/ [https://perma.cc/EVR5-2KK3].

51. *See* Anna Grazyna Kapolka, Landlord-Tenant Relationships and the COVID-19 Pandemic: A Qualitative Exploration of Landlord Power and the Eviction Moratorium 31–36 (May 2022) (M.P.H. thesis, Yale School of Public Health), https://elischolar.library.yale.edu/cgi/viewcontent.cgi?article=2158&context=ysphtdl [https://perma.cc/FZ5V-86RR]; *see also* Matthew Goldstein, *Large Landlords Aggressively Moved Against Renters in the Pandemic, a Report Says.*, N.Y. TIMES (July 29, 2022), https://tinyurl.com/mr8s8rb4 [https://perma.cc/W8TD-G49Y].

52. *See* Dhruti J. Patel, Note, *Policing Corporate Conduct Toward Minority Communities: An Insurance Law Perspective on the Use of Race in Calculating Tort Damages*, 53 U. MICH. J.L. REFORM 227, 229 (2019); Vyas & Warren, *supra* note 50, at 199; Vogell, *supra* note 35.

53. *See* Kapolka, *supra* note 51, at 52; *see also* Jennifer Ludden, *Corporate Landlords Used Aggressive Tactics to Push Out More Tenants Than Was Known*, NPR (July 28, 2022, 4:36 PM), https://www.npr.org/2022/07/28/1114128514/corporate-landlords-used-aggressive-tactics-to-push-out-more-tenants-than-was-kn [https://perma.cc/8BJ4-A33U].

54. *See* Gilman, *supra* note 50, at 308; Mari, *supra* note 34.

are worse for tenants in all circumstances—the reality is likely to be more nuanced and somewhat time- and context-dependent.[55]

At least one thing, however, seems clear: modern legal ownership vehicles like the LLC have afforded landlords a new degree of anonymity behind which to act.[56] As recent scholarship has discussed, title registries were largely a creation of colonial America.[57] While such registries have come under scrutiny for the role they played in furthering the systematic appropriation of Native land,[58] for centuries they have served the function of providing a modicum of transparency into ownership rights with respect to land in the United States through the encouragement of recording documents like deeds and mortgages.[59] Tenants were thus able to identify and, in some cases, mobilize against the owners of their properties.

The rise of corporate landlords, however, has reversed this centuries-long trend. LLCs must designate a registered agent for certain administrative purposes, such as receiving notice of legal process.[60] But in most jurisdictions, such corporate owners are not required to disclose beneficial ownership of the business.[61] As such, reports have proliferated regarding the ways in which this anonymity has made it difficult for tenants and local jurisdictions to identify the true owners of troubled properties for advocacy or enforcement.[62] Recent scholarship has outlined how landlords

55. *See, e.g.*, Michael Manville, Paavo Monkkonen, Michael C. Lens & Richard Green, *Renter Nonpayment and Landlord Response: Evidence from COVID-19*, HOUS. POL'Y DEBATE (July 27, 2022), https://www.tandfonline.com/doi/full/10.1080/10511482.2022.2085761 [https://perma.cc/Y9GU-DSW6] (determining smaller landlords were more likely than larger ones to threaten or initiate evictions in Los Angeles during the pandemic). Credit to Michael Lens for suggesting that this finding may result from larger landlords enjoying 1) better legal counsel during the pandemic-era eviction moratoria, and 2) greater access to capital affording them the ability to weather the decrease in rental revenue for a longer period of time during the eviction moratoria. The relative advantages and disadvantages of large corporate owners thus may differ to some extent over time—for example, as between the pandemic era and the period directly following the Great Recession.

56. One study of Austin, Texas from 2010 to 2021 did not find that large landlords had increased their market share in comparison to small landlords, but rather that across all landlords "rental ownership is rapidly 'formalizing' . . . indicated by a rise in organizationally complex and publicly obscuring ownership strategies . . . . [T]hese trends indicate landlording is becoming an institution: an enduringly popular and now depersonalized means of extracting rents from one's neighbors." *See* Messamore, *supra* note 44 (manuscript at 1).

57. *See* Park, *supra* note 6 (manuscript at 8–9).

58. *Id.* (manuscript at 9–10).

59. *Id.* (manuscript at 22–24).

60. Mykulyn & Raymond, *supra* note 5.

61. *Id.*

62. Alexander Ferrer, *The Real Problem with Corporate Landlords*, ATLANTIC (June 21, 2021), https://www.theatlantic.com/ideas/archive/2021/06/real-problem-corporate-landlords/619244/ [https://perma.cc/8XVC-2JTF] (suggesting corporate ownership of rental housing magnifies the power imbalance between landlords and tenants, with anonymous large investors able to avoid accountability for misbehavior or "milking" distressed properties, and with renters unable to conduct outside research into who ultimately owns their units).

use LLCs to avoid housing code enforcement.[63] This has led some jurisdictions to pass laws requiring some degree of disclosure.[64] Diverse ownership vehicles, such as real estate investment trusts (REITS), which allow many investors to pool funds for residential real estate acquisition, complicate the issue of accountability even further. It is difficult to hold "the landlord" accountable when an apartment is in fact owned by a fractured collection of investors, each with a minor interest in the underlying asset.

C. A Baseline of Housing Precarity

The new challenges posed by corporate ownership only exacerbate an already precarious housing landscape for tenants, particularly in the wake of the COVID-19 pandemic. Nearly half of all renters are cost-burdened, paying more than 30 percent of their income on rent—the federal line for what constitutes "affordable" housing—and nearly a quarter are severely cost burdened, paying more than 50 percent of their income.[65] These numbers increase when looking at the lowest-income households, more than 70 percent of which are cost burdened.[66] The numbers are even higher for households of color.[67]

The 2022 spike in inflation of course bears a close relationship with the recent rent escalation. In March 2022, the rent for single-family homes increased by 14 percent, capping off the "12th consecutive month of record-high growth."[68] Professionally managed apartments saw the greatest

63. *See, e.g.*, James Horner, Note, *Code Dodgers: Landlord Use of LLCs and Housing Code Enforcement*, 37 YALE L. & POL'Y REV. 647, 652, 654 (2019) (describing how landlords place their properties in separate LLCs to avoid the "full brunt of housing code enforcement" by limiting their liability for failure to pay fines or make needed repairs).

64. For example, in 2009, New York City passed a law that requires LLC landlords to register the names of their beneficial owners with the local Department of Housing Preservation and Development. *See* John Whitlow, *Gentrification and Countermovement: The Right to Counsel and New York City's Affordable Housing Crisis*, 46 FORDHAM URB. L.J. 1081, 1097 n.76 (2019). Washington, D.C. has taken similar steps. A bill introduced in 2018 to target LLC landlords was actually broadened by the city council, with all LLCs now required to report the names and addresses of any individual holding at least a 10 percent stake in the company. *See* Katie Arcieri, *D.C. Bill Would Unmask Individuals Behind Landlord, Developer LLCs*, WASH. BUS. J. (July 26, 2018, 5:51 PM), https://www.bizjournals.com/washington/news/2018/07/24/d-c-bill-would-unmask-individuals-behind-landlord.html [https://perma.cc/7YBV-ESDR]; Alex Koma, *D.C. Law Requiring Identification of Individuals Behind LLCs Takes Effect*, WASH. BUS. J. (Jan. 28, 2020, 5:09 PM), https://www.bizjournals.com/washington/news/2020/01/28/d-c-law-requiring-identification-of-individuals.html [https://perma.cc/79VB-JPFM].

65. *See* AMERICA'S RENTAL HOUSING 2022, *supra* note 8, at 3–4, 31.

66. *Id.* at 35.

67. *Id.* at 13–14.

68. *See* THE STATE OF THE NATION'S HOUSING 2022, *supra* note 40, at 2.

increase in rents in more than twenty years.[69] However, this is not an entirely new phenomenon. From 2001 to 2019, real median rent increased nationally by 16 percent, while real median incomes for renters increased by only 5 percent.[70]

With rising rents comes an increased risk of eviction and displacement. During the pandemic, a variety of federal, state, and local interventions, including eviction moratoria and federal emergency rental assistance, helped to stave off the worst of the feared wave of evictions.[71] However, with the Supreme Court striking down the CDC eviction moratorium[72] and with other such measures expiring or running out of funding, evictions significantly increased in 2022.[73]

II. RESURRECTING RENT STABILIZATION

A. A Complement to YIMBYism

What response is warranted in light of these housing challenges? A consensus has emerged in the United States around the need for additional

69. *Id.* at 30 ("After a brief dip in 2020, rent growth in the professionally managed segment hit a record 11.6 percent at the end of 2021 and remained at that pace in the first quarter of 2022. This was the largest year-over-year increase in two decades and more than three times the 3.2 percent average annual rise in the five years preceding the pandemic.").

70. *Id.* at 38.

71. *See* Michelle D. Layser, Edward W. De Barbieri, Andrew J. Greenlee, Tracy A. Kaye & Blaine G. Saito, *Mitigating Housing Instability During a Pandemic*, 99 OR. L. REV. 445, 519–21 (2021) (chronicling the various interventions taken at the state level to protect homeowners and tenants during the pandemic, including whether states provided mortgage, eviction, foreclosure, rent, and utility disconnection relief).

72. Ala. Ass'n of Realtors v. Dep't of Health & Hum. Servs., 141 S. Ct. 2485, 2486 (2021) (per curiam).

73. *See, e.g.*, Matthew Rand, *Franklin County Eviction Filings Surpassing Pre-Pandemic Levels*, WOSU (Dec. 19, 2022, 6:46 AM), https://news.wosu.org/2022-12-19/franklin-county-eviction-filings-surpassing-pre-pandemic-levels [https://perma.cc/FB85-23JT] (referring to data compiled by Princeton University's Eviction Lab to conclude that eviction filings in Columbus, Ohio and the surrounding area have begun to exceed pre-pandemic numbers); Nicholas Chiumenti, *Evictions in New England and the Impact of Public Policy During the COVID-19 Pandemic*, FED. RSRV. BANK OF BOS. (Dec. 15, 2022), https://www.bostonfed.org/publications/new-england-public-policy-center-regional-briefs/2022/evictions-in-new-england-and-the-impact-of-public-policy-during-the-covid19-pandemic.aspx [https://perma.cc/SQ5H-YMYH] (explaining that the number of evictions rose in Connecticut, Massachusetts, and Rhode Island after those states ended their emergency rental assistance programs in 2022, with Connecticut's eviction rate surpassing pre-pandemic levels); Jennifer Ludden, *Eviction Filings Are Up Sharply As Pandemic Rental Aid Starts to Run Out*, NPR (May 4, 2022, 8:00 AM), https://www.npr.org/2022/05/04/1095559147/eviction-filings-are-up-sharply-as-pandemic-rental-aid-starts-to-run-out [https://perma.cc/5M3D-WXHC] (emphasizing that while eviction rates rose slowly after the national moratorium ended in August 2021, when many states shuttered their rental aid programs in spring 2022, eviction filings reached "nearly the same level as before the pandemic"); Mihir Zaveri, *After a Two-Year Dip, Evictions Accelerate in New York*, N.Y. TIMES (May 2, 2022), https://www.nytimes.com/2022/05/02/nyregion/new-york-evictions-cases.html [https://perma.cc/MPK3-3ZPA] (noting the number of eviction cases filed by landlords in New York City's housing courts increased by 40 percent following the expiration of the state's eviction moratorium).

housing development.[74] Restrictive land use control regimes, in many cases the legacy of racist exclusionary zoning policies, have limited new construction, particularly in those jurisdictions with the most constrained supply of housing.[75] Basic economic theory suggests that increasing housing supply will bring down prices. Filtering theory posits that as new market-rate housing is built, the older stock of housing "filters down" the income ladder and thus makes everyone better off.[76]

Drawing on these insights, the YIMBY movement has impacted public policy debates at every level of government.[77] The once-untouchable single-

74. *See supra* note 10 and accompanying text; *see also* Jerusalem Demsas, *Housing Breaks People's Brains*, ATLANTIC (Nov. 23, 2022), https://www.theatlantic.com/ideas/archive/2022/11/us-housing-supply-shortage-crisis-2022/672240/ [https://perma.cc/MW5D-FSL6] ("Once you accept the existence of a housing shortage, the obvious policy response is to build a bunch of homes."); Michael D. Tanner & Vanessa Brown Calder, *Americans Worried About Housing Costs, Open to YIMBY*, CATO INST. (Sept. 28, 2022, 10:59 AM), https://www.cato.org/blog/americans-worried-about-housing-cost-open-yimby [https://perma.cc/3W9Y-KDLM] (tracking the results of a recent study that suggests Americans are less reluctant to build new housing in their own neighborhoods given the ongoing affordability crisis). Because the pro-housing movement is ideologically quite diverse, however, those advocating for additional housing development do not have uniform priorities in the effort to increase supply and improve affordability. *See* Nolan Gray, *What Should YIMBYs Learn from 2018?*, MKT. URBANISM (Feb. 4, 2019), https://marketurbanism.com/2019/02/04/what-should-yimbys-learn-from-2018/ [https://perma.cc/WU7Y-GM2S] (arguing that as YIMBYs become more bipartisan, pro-housing advocates will have to strike a balance between coalition building and avoiding alienating the movement's leftist bloc); Shelby R. King, *Have the YIMBYs Evolved?*, SHELTERFORCE (Nov. 4, 2022), https://shelterforce.org/2022/11/04/have-the-yimbys-evolved/ [https://perma.cc/FRX2-2Q9V] (explaining that while the YIMBY movement is more conscientious about the projects it supports, its primary goal remains "to build millions more units as quickly as possible in as many places as possible with as few barriers as possible").

75. *See* Arica Young, *What Are Zoning and Land-Use Regulations and How Do They Affect Housing Supply?*, BIPARTISAN POL'Y CTR. (Jan. 25, 2022), https://bipartisanpolicy.org/explainer/what-are-zoning-and-land-use-regulations-and-how-do-they-affect-housing-supply/ [https://perma.cc/H5Q9-JPXP] (describing land use regulations and zoning as accounting for a significant percentage of the total cost of housing construction); VANESSA BROWN CALDER, CATO INST., POLICY ANALYSIS NO. 823, ZONING, LAND-USE PLANNING, AND HOUSING AFFORDABILITY 1 (2017), https://www.cato.org/policy-analysis/zoning-land-use-planning-housing-affordability [https://perma.cc/8S5C-C6GM] (using regression analysis to demonstrate increased land use regulation is associated with rising average home prices in nearly every state). The problem is most acute in cities with the highest costs of living, including San Francisco, and Washington, D.C. *See* Sarah Wright, *How San Francisco Makes It Insanely Hard to Build Housing*, S.F. STANDARD (Sept. 13, 2022, 2:43 PM), https://sfstandard.com/housing-development/how-san-francisco-makes-it-insanely-hard-to-build-housing/ [https://perma.cc/VHE6-GWTC]; Jenny Schuetz, *Restrictive Zoning Is Impeding DC's Goal to Build More Housing*, BROOKINGS INST. (Oct. 8, 2019), https://www.brookings.edu/blog/the-avenue/2019/10/08/restrictive-zoning-is-impeding-dcs-goal-to-build-more-housing/ [https://perma.cc/AQZ8-975E].

76. Ira S. Lowry, *Filtering and Housing Standards: A Conceptual Analysis*, 36 LAND ECON. 362, 362 (1960); *see also* Liyi Liu, Doug McManus & Elias Yannopoulos, *Geographic and Temporal Variation in Housing Filtering Rates*, 93 REG'L SCI. & URB. ECON., Mar. 2022, at 1.

77. *See, e.g.*, Erin McCormick, *Rise of the YIMBYs: The Angry Millennials with a Radical Housing Solution*, GUARDIAN (Feb. 3, 2022, 7:48 AM), https://www.theguardian.com/cities/2017/oct/02/rise-of-the-yimbys-angry-millennials-radical-housing-solution [https://perma.cc/7GM3-LZAG] (local); Kriston Capps, *New York State Joins the YIMBY Fray*, BLOOMBERG (Jan. 13, 2023, 9:52 AM), https://www.bloomberg.com/news/articles/2023-01-13/new-york-goes-full-yimby-from-long-island-to-buffalo [https://perma.cc/P7F2-GZK8] (state); Jason Jordan, *Congress Funds New 'YIMBY'*

family housing zoning district has come under increasing scrutiny.[78] Proposals that would streamline construction permitting for developers, in some cases bypassing the need for local approvals, have gained momentum.[79] Litigation is proliferating to challenge land use policies that unduly restrict new development.[80] The unified mantra of this movement is straightforward—the cause of the current affordability crisis is an artificial constraint on housing development. The solution: build more housing.

At the same time, there is a growing awareness that new development alone will not solve all issues of housing insecurity. As an initial matter, there are those households for whom even the bare cost of construction outstrips what they can afford.[81] There also remain difficult transitional issues. New housing takes time to build—the relatively optimistic Housing Supply Action Plan released by the Biden Administration in May of 2022 uses a five-year time horizon.[82] Other YIMBY-inspired efforts are looking

Grants for Zoning Reform, AM. PLAN. ASS'N (Jan. 10, 2023), https://www.planning.org/blog/9262900/congress-funds-new-yimby-grants-for-zoning-reform/ [https://perma.cc/XNX9-VVGF] (federal).

78. *See* Jennifer Graham, *Will Ending Single-Family Zoning Solve America's Housing Crisis?*, DESERET NEWS (Jan. 14, 2020, 12:01 AM), https://www.deseret.com/indepth/ 2020/1/14/21043482/upzoning-housing-crisis-rent-single-family-zoning-american-dream-tiny-homes-accessory-dwellings [https://perma.cc/HDF8-7CEL] (acknowledging that upzoning is gaining momentum around the country, as the largest municipalities seek to combat housing affordability and homelessness issues by "doing away with single-family zoning, long a component of the American dream"); Brandon Fuller & Nolan Gray, *A Red-State Take on a YIMBY Housing Bill*, BLOOMBERG (Feb. 20, 2019, 6:00 AM), https://www.bloomberg.com/news/articles/2019-02-20/utah-pro-housing-bill-is-zoning-reform-red-state-style [https://perma.cc/FYK5-D4RC] (detailing how a Utah bill aimed at zoning reform could provide a model for the rest of the Mountain West region, keeping local governments in control of responding to the housing crisis).

79. In 2019, California passed SB 330, providing the state's hitherto nascent builder's remedy with strong legal backing, "transform[ing] it into a nuclear option for developers to deploy in municipalities with persistent barriers to housing production." Jason M. Ward, *Santa Monica's 'Builder's Remedy' Experiment Holds Lessons for the Region*, RAND CORP.: RAND BLOG (Nov. 8, 2022), https://www.rand.org/blog/2022/11/santa-monicas-builders-remedy-experiment-holds-lessons.html [https://perma.cc/8QU6-BNM7]. Similar provisions are available to developers in Rhode Island, Illinois, and Connecticut. Eric E. Stern, Note, *A Federal Builder's Remedy for Exclusionary Zoning*, 129 YALE L.J. 1516, 1530 (2020). Massachusetts's builder's remedy system was enacted in 1969, allowing developers to bypass the permitting process if projects include subsidized affordable housing. Eric J. Gouvin, *Rural Low-Income Housing and Massachusetts Chapter 40B: A Perspective from the Zoning Board of Appeals*, 23 W. NEW ENG. L. REV. 3, 9–11 (2001).

80. *See, e.g.*, Ginny Monk, *Connecticut Lawsuit Claims Woodbridge Zoning Policy Violates Housing Laws*, HARTFORD COURANT (Aug. 31, 2022, 6:20 PM), https://www.courant.com/news/connecticut/hc-news-lawsuit-woodbridge-connecticut-housing-20220830-67pbylo4mbaxjhrtks4lysxssi-story.html [https://perma.cc/5ARR-4FLA] (highlighting a lawsuit alleging the zoning regulations of a wealthy New Haven suburb violate Connecticut's Zoning Enabling Act, Fair Housing Act, and due process and equal protection clauses of the state constitution).

81. SCHUETZ, *supra* note 10, at 8, 64–65 (noting that the poorest 20 percent of American households do not have enough income to pay market rates for housing, regardless of location).

82. 2022 Housing Supply Action Plan, *supra* note 24 (positing the proposed legislative and administrative steps "can put the economy on a path to closing the housing supply gap in the next five years").

even further into the future.[83] As described above, however, the negative effects of eviction and displacement are impacting households and communities in the present. Severe housing cost burdens are forcing difficult tradeoffs between housing security and necessities like food and healthcare.[84] A distant promise of reducing the cost of housing through increasing supply and housing filtering provides little comfort to these households today.

It is also the case that while theoretically elegant, filtering theory breaks down in the real world. In a gentrifying neighborhood, housing does not necessarily filter down the income ladder—instead, new construction often removes older and cheaper housing from the market and can lead to escalating prices.[85] A more complex model would account for such dynamic neighborhood effects. Significant new housing development and a more builder-friendly regulatory environment would not systematically prevent steep rent hikes and displacement at the individual household level.

One complementary approach to the YIMBY movement might be, as some have argued, to "give poor people more money."[86] Interventions like the Earned Income Tax Credit and the Child Tax Credit have lifted millions out of poverty.[87] Increased income supports, like a higher minimum wage or universal basic income, would be a welcome addition to the toolkit for addressing housing insecurity. And yet, not unlike critiques of campaigns to increase the Housing Choice Voucher program payment standards, there is a concern that landlords would capture significant amounts of such

83. *See* Shelby R. King, *Is a YIMBY/Tenant Activist Bridge Possible?*, SHELTERFORCE (Dec. 6, 2022), https://shelterforce.org/2022/12/06/is-a-yimby-tenant-activist-bridge-possible/ [https://perma.cc/KL8N-HB2W] (explaining that because it can take up to seven years to build affordable housing, a segment of YIMBYs seeks to fill that void by focusing in equal measure on construction and tenant protections furthering racial equity).

84. AMERICA'S RENTAL HOUSING 2022, *supra* note 8, at 4.

85. *See* Note, *Reassessing Rent Control: Its Economic Impact in a Gentrifying Housing Market*, 101 HARV. L. REV. 1835, 1836 (1988) [hereinafter *Reassessing Rent Control*] (decrying the filtering model because upper-income groups displace lower-income groups in gentrifying areas); Derek Hyra, *Commentary: Causes and Consequences of Gentrification and the Future of Equitable Development Policy*, 18 CITYSCAPE 169, 171 (2016) (highlighting the consequences of gentrification, including political and cultural displacement as low-income minorities are ousted by upper-income people moving into their neighborhoods).

86. SCHUETZ, *supra* note 10, at 70. Advocacy efforts around a universal basic income (UBI) are an example of this approach. *See, e.g.*, Benjamin M. Leff, *EITC for All: A Universal Basic Income Compromise Proposal*, 26 WASH. & LEE J. C.R. & SOC. JUST. 85, 88–90 (2019) (comparing the Earned Income Tax Credit (EITC) with UBI and considering ways to make the latter more like the former).

87. Arohi Pathak, *Making CTC and EITC Expansions Permanent Would Reduce Poverty and Grow the Economy*, CTR. FOR AM. PROGRESS (Sept. 21, 2021), https://www.americanprogress.org/article/making-ctc-eitc-expansions-permanent-reduce-poverty-grow-economy/ [https://perma.cc/3QEC-9K5D] (noting Census Bureau data revealed the Earned Income Tax Credit, Child Tax Credit, and other federal aid helped stymie financial ruin for many during the COVID-19 pandemic).

supports through additional rent increases.[88] While this is an issue that hinges on economic factors like the elasticity of demand,[89] higher incomes should not be thought of as equivalent to property rights protections: the property right not to be evicted from one's home but for good cause is not the same thing as cash to afford a different apartment. Ultimately, neither more housing nor more cash eliminates the need for non-market-contingent tools that directly prevent rent gouging and provide other immediate anti-displacement protections for tenants.

B. Responding to the Classic Critique of Rent Regulation

In 1988, Duncan Kennedy, a founding member of the Critical Legal Studies movement, mounted a defense of rent control[90] against "[t]raditional economic critiques" of the policy.[91] He disputed the notion that rent control inevitably leads to disinvestment, abandonment, harassment, lower supply, and higher rents.[92] Instead, Kennedy proposed a package of land use interventions that, if adopted together, would provide protections to tenants while not excessively blunting new construction or denying landlords a "reasonable return."[93] His proposal combined: the allowance of rent increases for reasonable increased maintenance costs, rehabilitation expenditures, and inflation; a strong warranty of habitability to prevent deteriorating conditions;[94] good cause eviction protections to

88. *See* Shirin Ali, *Higher Minimum Wages Help with Rent Defaults—Until Landlords Raise Rent, Study Says*, HILL (Mar. 2, 2022), https://thehill.com/changing-america/respect/poverty/596558-higher-minimum-wages-help-with-rent-defaults-until-landlords/ [https://perma.cc/7BUK-S65R] (discussing a study that concluded increased salaries—namely through a higher minimum wage—afford only momentary relief for many Americans, as positive effects last "only until landlords raise rent[s]"); *see also* Steve Thompson & Dalton Bennett, *D.C. Overpays Landlords Millions to House the City's Poorest*, WASH. POST (Feb. 16, 2023, 6:00 AM), https://www.washingtonpost.com/investigations/2023/02/15/dc-housing-authority-overpays-landlords/ [https://perma.cc/E4TL-KGGF] (noting how excessive payments by housing authorities to landlords can create upward pressure on rents for non-subsidized tenants).

89. The degree to which a good's demand is elastic depends on whether consumers are able to opt for an alternative in the marketplace. In the context of rental housing, this relates to landlords' ability to raise rent and capture more of renters' incomes. Thus, the more elastic demand is for rental housing, the harder it is for landlords to raise rents, since tenants have greater optionality in the marketplace.

90. See *supra* note 12 for a discussion of the relationship, and often interchangeability, of the terms "rent control" and "rent stabilization."

91. *Reassessing Rent Control*, *supra* note 85, at 1844.

92. *Id.*

93. *Id.* at 1842.

94. Kennedy's proposal did not provide for "vacancy decontrol"—or the ability of landlords to increase rents to market rents in between tenancies. His concern was that it would increase tenant harassment. The lack of vacancy decontrol, however, does not strike me as an essential feature of the proposal, at least with respect to meeting the policy's anti-displacement goal.

limit "re-tenanting" and tenant harassment;[95] conversion restrictions that would disallow the removal of rental units from the housing stock, for example, for redevelopment as condominiums; and, finally, an exemption from these restrictions for new construction so as not to chill the development of new housing.[96]

This proposed collection of interventions is far from perfect. From a tenant perspective, a strong warranty of habitability and good cause eviction protections are only as valuable as the ability to enforce such rights. A more modern proposal would add a right to counsel in landlord tenant matters, as an increasing number of states and cities have established.[97] Even with counsel, however, this proposal would not prevent all threat of displacement—some "reasonable" maintenance or rehabilitation cost recoupment might still be beyond what a current tenant could afford. As discussed above, increased income supports would be a helpful complement to enhanced tenant protections. Others argue that more widespread social housing is necessary.[98]

From a landlord perspective, the objections to Kennedy's proposal are well known. It clearly restrains landlord autonomy in a number of ways—to set rent at any level, to evict for any reason, to convert to any land use. Landowners, particularly in the context of arguing against rent stabilization campaigns, regularly dispute the state's ability to limit property rights in these ways.[99] Yet, as I and others have discussed elsewhere, U.S. property law has never extended owners an unconditional right to use their property

95. Good cause eviction protections often state that a landlord cannot evict a tenant at the end of a lease term, unless based on certain grounds (e.g., nonpayment of rent, other material breach of the lease, a desire to use the premises as a primary residence, etc.). The desire to rent to higher-income tenants at increased rents does not constitute good cause.

96. *Reassessing Rent Control*, *supra* note 85, at 1841–43.

97. As of June 2023, Washington State, Connecticut, and Maryland have all codified a statewide eviction right to counsel (some jurisdictions frame it as "universal access to counsel" rather than a "right"). Similar measures have been proposed or introduced in South Carolina, Massachusetts, New Jersey, and Delaware. At the city level, evicted tenants have a formal right to counsel in Houston, Baltimore, Philadelphia, New York, Denver, Minneapolis, Tulsa, Kansas City, Detroit, Cleveland, Louisville, San Francisco, and New Orleans, among others. *See Status Map: Housing-Evictions*, NAT'L COAL. FOR A CIV. RIGHT TO COUNS., http://civilrighttocounsel.org/map [https://perma.cc/A3CV-44BE].

98. *See, e.g.*, PolicyLink, *A Bolder Future for Housing Justice: 'These Times Call for Radical Actions,'* SHELTERFORCE (Jan. 15, 2021), https://shelterforce.org/2021/01/15/ imagining-a-bolder-future-for-housing-justice/ [https://perma.cc/PE34-LM2B] (discussing the Homes Guarantee campaign's call for twelve million "new units of social housing, which is housing that's permanently off of the private market, not available for speculation").

99. *See* Brandon M. Weiss, *Progressive Property Theory and Housing Justice Campaigns*, 10 U.C. IRVINE L. REV. 251, 272 (2019) (detailing the rhetoric invoked by opponents of a California housing justice initiative, who argued against an infringement on fundamental private property rights by stating: "Prop 10 will take away homeowners' rights: Prop 10 eliminates protections for homeowners and allows regulators to tell single-family homeowners how much they can charge to rent out a single room in their homes.").

however they wish.[100] Rather, the law balances the rights of owners with other important values.[101]

From the perspective of economic efficiency, there is plenty of room for critique. The proposal of course deviates from how an unfettered market would set prices and allocate resources. Market signals for converting rental housing to condominiums or other uses would be ignored. Wealthier tenants who would be willing to pay more than existing tenants would not be able to register their "higher valuing" of the resource in the market. Rent assessment boards—a common feature of jurisdictions with some form of rent control or rent stabilization—cost money, as they must be staffed by employees who determine, for example, what constitutes a reasonable rehabilitation expenditure.

Yet the regulatory environment without rent stabilization is also highly inefficient from the perspective economic theory—skewed by many years of historic and ongoing government intervention favoring wealthier and whiter homeowners.[102] Summing the relative utility gains and losses of all parties from imposing a rent stabilization ordinance is not a straightforward exercise.[103] A less distortive approach to righting such historical wrongs would be via the tax and transfer system. But, as discussed above, income supports do not provide the same sort of relief as property rights protections when it comes to the desire to remain in one's home.

While clearly not a panacea, rent stabilization coupled with tenant protections in the form that Kennedy proposed can be part of an overall approach to housing security in the United States that balances a variety of interests. Rather than standing in competition, YIMBYs, advocates for income supports, and tenant rights advocates should view themselves as working on complementary approaches to the shared goal of greater housing security.[104] While there is some tension between improving the regulatory

100. *Id.* at 268–69 ("Modern property law already significantly deviates from the overly-simplistic Blackstonian approach in a variety of areas: in broad doctrinal fields like nuisance, zoning, servitudes, and takings; in specific topics like public accommodation laws, the time-limited monopoly afforded to intellectual property owners, and rules disfavoring future restraints on alienation; as well as in individual one-off cases that limit property rights in the face of broader public policies." (footnotes omitted)); *see also* Joseph William Singer, *We Don't Serve Your Kind Here: Public Accommodations and the Mark of Sodom*, 95 B.U. L. REV. 929, 932 (2015) (describing Blackstone's vision of property as "under the control of the 'owner' and subject to the owner's 'sole and despotic dominion'" as an impossible model for all property).

101. *See* Weiss, *supra* note 99, at 270.

102. *See Reassessing Rent Control*, *supra* note 85, at 1849–50 (noting that while critiques of rent control assume the current market is the most efficient one attainable, the current market is "fraught with imperfections" as characteristics like the federal income tax system, exclusionary zoning laws, and information gaps among prospective tenants prevent perfect competition).

103. *See id.*

104. At a minimum, YIMBY advocates could offer support for some version of rent regulation as part of a political compromise that broadens the coalition advocating for additional housing development.

environment to encourage new private market production and extending additional tenant protections that limit owner autonomy, the exemption for new construction would help mitigate this tension. And if reasonable limits on rent increases or evictions deter some prospective new landlords, those measures can serve as a filter to limit entry into a market in which an investor is also a steward of the home of another.

III. IMPLEMENTING NATIONAL RENT STABILIZATION

A. States & Localities

An increasing number of states and local jurisdictions are reconsidering rent stabilization. California and Oregon passed statewide rent regulations in 2019.[105] In doing so, they became the only states with jurisdiction-wide rent limits, joining the District of Columbia, whose current rent control law dates back to 1985.[106]

Maryland, New Jersey, and New York do not have statewide rent limits but expressly allow them at the local level.[107] Of the 182 cities and municipalities that had some form of rent control as of 2018, 99 were in New Jersey and 63 were in New York.[108] These laws have generally been on the books for decades, largely the product of a prior era of advocacy efforts in the 1970s.[109] In 2021, St. Paul enacted rent control and Minneapolis voters approved a charter amendment that would authorize the city council to do so, helping to usher in a new era of activity on this front.[110] During the 2022 midterm elections, voters in Portland (Maine), Santa Monica, Pasadena, and Richmond (California), and Orange County (Florida) also approved various measures to limit rent increases and extend

105. *See* Sargent, *supra* note 13.

106. NAT'L MULTIFAMILY HOUS. COUNCIL, RENT CONTROL BY STATE LAW 1 (2023), https://www.nmhc.org/globalassets/advocacy/rent-control/rent-control-by-state-law-chart_2023.pdf [https://perma.cc/8QJS-9799]; *see also* Rental Housing Act of 1985, 32 D.C. Reg. 3089 (June 7, 1985) (codified at D.C. CODE § 42-3502 (1985)).

107. NAT'L MULTIFAMILY HOUS. COUNCIL, *supra* note 106, at 1, 4–6.

108. PRASANNA RAJASEKARAN, MARK TRESKON & SOLOMON GREENE, URB. INST., RENT CONTROL: WHAT DOES THE RESEARCH TELL US ABOUT THE EFFECTIVENESS OF LOCAL ACTION? 3 (2019), https://www.urban.org/sites/default/files/publication/99646/rent_control._what_does_the_research_tell_us_about_the_effectiveness_of_local_action_1.pdf [https://perma.cc/SSK3-ZFZ3]. Eighteen of the remaining twenty could be found in California, while Washington, D.C. and Takoma Park, Maryland rounded out the list of cities with rent regulation at the time. *Id.*; NAT'L MULTIFAMILY HOUS. COUNCIL, *supra* note 106, at 4.

109. *See* Stern, *supra* note 12, at 145; Kenneth K. Baar, *Rent Control in the 1970's: The Case of the New Jersey Tenants' Movement*, 28 HASTINGS L.J. 631 (1977).

110. *See supra* note 13 and accompanying text.

tenant protections.[111] More than a dozen other states have recently seen bills introduced that would eliminate state preemptions, impose rent limits, or provide other related tenant protections.[112]

Many of these laws incorporate features of the sort discussed above. Far from being inflexible standalone rent caps, the currently enacted rent control and rent stabilization laws across the United States balance a variety of competing policy goals through the delicate calibration of multiple variables: extending annual "fair returns" to owners (often as a ratio of net income compared to overall property valuation), with allowances for additional hardship increases;[113] providing exemptions, either time-limited or permanent, for new rental housing construction;[114] pegging annual rent increases to some function of the consumer price index (CPI);[115] allowing landlords to recoup the cost of capital improvements at certain rates over prescribed periods;[116] and establishing tenant protections, such as good cause eviction and/or relocation payment requirements.[117] In essentially all jurisdictions, an implied warranty of habitability exists with respect to residential leases.[118] Notably absent, however, are 1) widespread limits on

111. Har, *supra* note 14; Jennifer Ludden, *Rent Control Expands as Tenants Struggle with the Record-High Cost of Housing*, NPR (Nov. 28, 2022, 5:00 AM), https://www.npr.org/2022/11/28/1138633419/rent-control-economists-tenants-affordable-housing-ballot-measures [https://perma.cc/58VW-TRL5]. In the lead up to the 2022 midterm elections, several other jurisdictions passed laws either introducing or strengthening rent regulation laws, including Oakland, Santa Ana, and Antioch, California, and Perth Amboy, New Jersey. *See* Natalie Orenstein, *Landlords Can't Raise Rents Above 3%, Oakland City Council Says*, OAKLANDSIDE (June 1, 2022), https://oaklandside.org/2022/06/01/oakland-rent-control-increases-3/ [https://perma.cc/NK5F-UVP6] (Oakland); *Rent Stabilization and Just Cause Eviction Ordinance*, CITY OF SANTA ANA, https://www.santa-ana.org/renter-protections/ [https://perma.cc/SRT5-KQPM] (Santa Ana); *City of Antioch Rent Stabilization Ordinance*, ANTIOCH, CAL. RENT PROGRAM, https://www.antiochca.gov/rent-program/ [https://perma.cc/BYF7-RAQW] (Antioch); *Rent Leveling Board*, HISTORIC CITY OF PERTH AMBOY, N.J., https://www.perthamboynj.org/government/municipal_boards/rent_leveling_board [https://perma.cc/M42W-FMFH] (Perth Amboy).

112. *See* NAT'L MULTIFAMILY HOUS. COUNCIL, SELECT RENT CONTROL STATE LEGISLATION (2022), https://www.nmhc.org/globalassets/knowledge-library/topics/affordable-housing/2022-rent-control-legislation.pdf [https://perma.cc/Y4S4-ZQA5] (highlighting pending rent control legislation across the country, including a statewide rent stabilization bill in Hawaii and proposed caps on annual rent increases in Illinois, Hawaii, Maryland, Rhode Island, South Carolina, and Washington).

113. Vicki Been, Ingrid Gould Ellen & Sophia House, *Laboratories of Regulation: Understanding the Diversity of Rent Regulation Laws*, 46 FORDHAM URB. L.J. 1041, 1045, 1068–70 (2019).

114. *Id.* at 1050–52.

115. *Id.* at 1059–60. Jurisdictions with local rent regulations vary in their approach to vacancy decontrol, with some allowing landlords to raise rents to market levels between tenancies. *Id.* at 1055–56.

116. *Id.* at 1063.

117. *Id.* at 1071–73. Most jurisdictions with this type of rent control do not require income testing to determine eligibility for the protection. *See, e.g.*, *id.* at 1073 n.208 (quoting the San Francisco tenant harassment law that allows "[a]ny person" to enforce its provisions).

118. *See* David A. Super, *The Rise and Fall of the Implied Warranty of Habitability*, 99 CALIF. L. REV. 389, 392, 394 (2011) (describing how "[l]egislatures and courts read implied warranties of habitability . . . into residential leases and made them mutual with the tenant's covenant to pay rent"

conversions to condominiums or other uses[119] and 2) broad access to counsel in landlord-tenant cases.[120]

Have these laws had the effect of aerial bombardment? Studying the precise causal impact of a given rent stabilization ordinance is notoriously difficult given the number of confounding variables affecting a jurisdiction's housing stock at any given time.[121] Yet, research has found rent regulation laws to have successfully lowered relative rents and helped current tenants remain in their homes for longer periods of time.[122] If the primary public policy goal is one of anti-displacement, evidence shows that rent stabilization is effective.

There is some limited evidence of landlords deferring maintenance or more frequently converting to other uses like condominiums in jurisdictions with rent control.[123] The research does not account for how various maintenance and rehabilitation cost recoupment schemes interact with this finding or how stricter code enforcement, particularly with increasing

following the civil rights movement and tenants' rights revolution of the 1960s and early 1970s (footnotes omitted)).

119. Only a handful of cities have local ordinances protecting tenants from condo conversions. *See, e.g.*, Sandy Gadow, *What Happens When Your Rental Is Being Converted into a Condo?*, WASH. POST (Sept. 29, 2015, 7:00 AM), https://www.washingtonpost.com/realestate/what-happens-when-your-rental-is-being-converted-into-a-condo/2015/09/28/e5e528fa-5336-11e5-9812-92d5948a40f8_story.html [https://perma.cc/B9CD-ST87] (spotlighting the Rental Housing Conversion and Sale Act of 1980 in Washington, D.C., which afforded building inhabitants the right to organize and vote on a developer's plan to convert the space into a condo). State governments have frequently countered these restrictions. In California, for example, the Ellis Act allows landlords to evict tenants from rent-controlled properties if they ensure all units are no longer available on the rental market (be it through sale of the property, condo conversion, or vacancy). CAL. GOV'T CODE §§ 7060–7060.7 (West 1985); *see also* J.T. The L.A. Storyteller, *464 Evictions Since 2000: How Ellis Act Displacements Are Priming East Hollywood for a Latinx and Asian Removal Project*, KNOCK LA (Nov. 12, 2020), https://knock-la.com/ellis-act-evictions-displacement-east-hollywood-f808a14531c1/ [https://perma.cc/V8VZ-56NC] (using a registry of Ellis Act evictions to determine the law's impact on rent-controlled units in Los Angeles between 2001 and 2020). Cities with strict conversion limits, such as San Francisco, have thus seen their regulations limited by statewide activity in the field. *See* Kathryn Bilder, *Another San Francisco Ordinance Falls to the Ellis Act*, PERKINS COIE: CAL. LAND USE & DEV. L. REP. (May 23, 2018), https://www.californialandusedevelopmentlaw.com/2018/05/23/another-san-francisco-ordinance-falls-to-the-ellis-act/ [https://perma.cc/PG5N-X9FC].

120. *See generally* NAT'L COAL. FOR A CIV. RIGHT TO COUNS., *supra* note 97 (illustrating that while over a dozen cities have codified the right to counsel in eviction proceedings, equivalent statewide protections are only available in three jurisdictions).

121. *See* Been, Ellen & House, *supra* note 113, at 1046 (noting the static nature of rent control laws, lack of controls, difficulty obtaining rent and tenant outcome data, and differences in market pressures across jurisdictions).

122. RAJASEKARAN, TRESKON & GREENE, *supra* note 108, at 4; *see also* Been, Ellen & House, *supra* note 113, at 1046–47 (acknowledging tradeoffs among jurisdictions' goals for their rent control programs, which balance lower rents and longer stays for tenants in rent-regulated units with the reality that some landlords demolish or convert their rental stock instead).

123. *See* Rebecca Diamond, Tim McQuade & Franklin Qian, *The Effects of Rent Control Expansion on Tenants, Landlords, and Inequality: Evidence from San Francisco*, 109 AM. ECON. REV. 3365, 3368 (2019) (noting the loss of rental stock via conversion to other uses as a likely potential driver of observed decrease in supply); *see also* Been, Ellen & House, *supra* note 113, at 1048.

access to counsel in landlord-tenant matters, would impact the analysis.[124] Laws restricting conversions to condominiums and other land uses would also likely limit these findings, as scholars have noted.[125] Given the exemptions for new construction in most laws, research has found no significant chilling effect on the development of new rental housing.[126] As an Urban Institute report concluded, "[r]ent control's poor reputation in the economics literature has tended to rely more on models than on case studies or observed impacts."[127]

Notwithstanding the recent renaissance that state and local rent stabilization efforts are enjoying, the policy remains largely out of reach in most U.S. jurisdictions. More than thirty states still explicitly preempt localities from passing rent regulations.[128] The recent law passed in Orange County, Florida may never take effect given potentially preemptive state law.[129] Efforts are afoot to push back on these limits in certain states,[130] though competing efforts aim to fortify or expand preemption elsewhere.[131]

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124. *See* Justin R. La Mort, *The Theft of Affordable Housing: How Rent-Stabilized Apartments Are Disappearing from Fraudulent Individual Apartment Improvements and What Can Be Done to Save Them*, 40 N.Y.U. REV. L. & SOC. CHANGE 351, 352 (2016) (articulating that individual apartment improvements—exceptions to rent-stabilization policies' limits on rent increases intended to promote renovations and enable investment recoupment—are frequently fraudulent, leading to the loss of rent-controlled units from the marketplace).

125. *See* RAJASEKARAN, TRESKON & GREENE, *supra* note 108, at 5–6 (explaining that rent-controlled buildings in San Francisco—where state law generally preempts local limits on condo conversion—were 10 percent more likely to be transformed into condos or tenancies-in-common than properties outside the rent control scheme).

126. *Id.* at 5.

127. *Id.* at 7.

128. Sharon Yamen, Hilary Silvia & Linda Christiansen, *In Defense of the Landlord: A New Understanding of the Property Owner*, 50 URB. LAW. 273, 279–80 (2020).

129. *See* Har, *supra* note 14 (noting a state court invalidated the rent cap because Florida law requires such an ordinance to illustrate an existing housing emergency before it can be passed).

130. *See* Kelly Werthmann, *New Colorado Bill Introduced Could Give Cities Ability to Enact Rent Control*, CBS NEWS COLO. (Jan. 30, 2023, 7:39 AM), https://www.cbsnews.com/colorado/news/new-bill-introduced-cities-ability-enact-rent-control/ [https://perma.cc/87JW-VEQD] (discussing the introduction of a bill in the Colorado legislature that would repeal the state's prohibition on rent control and allow cities to enact regulations to limit rents); *see also* Sargent, *supra* note 13.

131. Notwithstanding Boston Mayor Michelle Wu's proposal to limit annual rent increases in the city, Massachusetts's 1994 ban on rent control remains in effect, with statewide Democrats expressing concern that such measures have been voted down in previous years and could discourage future investments in housing. *See* Catherine Carlock & Emma Platoff, *Wu Floats Long-Awaited Rent Control Proposal, but Many Hurdles Remain*, BOS. GLOBE (Jan. 18, 2023, 1:18 PM), https://www.bostonglobe.com/2023/01/18/business/wu-floats-rent-control-proposal-that-would-cap-rent-hikes-10-percent/ [https://perma.cc/4LGG-WMQP]. And in Minnesota, lawmakers in the state senate recently advanced a bill to retroactively cancel rent control measures adopted by voters in Minneapolis and St. Paul. *See* Peter Callaghan, *Minnesota Senate Committee Moves Bill to Retroactively Cancel Rent Control Measures Passed by Voters in Minneapolis, St. Paul*, MINN. POST (Mar. 16, 2022), https://www.minnpost.com/state-government/2022/03/minnesota-senate-committee-moves-bill-to-retroactively-cancel-rent-control-measures-passed-by-voters-in-minneapolis-st-paul/ [https://perma.cc/A5BM-EH6T].

B. A Role for the Federal Government

Campaigns at the state and local level may ultimately lead to more widespread access to the protections afforded by rent stabilization. Such efforts, however, are more likely to result in an uneven tapestry of laws across the United States. Large corporate landlords, with portfolios spanning multiple states, and their tenants will continue to fall under dramatically different regulatory regimes depending on where a given rental unit is located.

Some might argue that such state-to-state differences are a feature rather than a flaw of federalism. After all, is it not the case that differing state or local market conditions call for divergent regulatory approaches? While it is true that it would be foolhardy to apply a one-size-fits-all approach to all housing regulation, the core features of a modern rent stabilization as described above—including the notion that current tenants should not see dramatic rent increases in a single year, certainly at least not without a rent board certifying reasonably necessary rehabilitation expenses or increased costs—should be the norm. An exemption for new construction should ameliorate concerns regarding impacts on revitalization efforts and, as many ordinances already contain, one could imagine rules that allow limited exceptions for particular hardships or other unique circumstances.

As with U.S. civil rights laws, the federal government could play an important role in helping to ensure that some baseline level of protections exists nationally. This Essay has attempted to make the case that the rise of corporate landlords, given their unprecedented scale, anonymous nature, and diversified ownership structure, and given the accruing evidence of certain adverse behavior, furthers the rationale for federal government intervention. Whether the same large corporate landlord owns a rental property in Minnesota or Florida would not dictate if it can evict tenants at the end of a lease term without good cause or impose destabilizing rent spikes during the term of a single tenancy.

While housing has, to some extent, traditionally fallen under the purview of state governance, there is a growing awareness of the pervasive manner in which the federal government has historically and continues to shape the housing landscape in the United States.[132] Federal laws such as the Fair Housing Act (FHA), American with Disabilities Act (ADA), Violence Against Women Act (VAWA), Community Reinvestment Act (CRA), Fair

132. *See generally* RICHARD ROTHSTEIN, THE COLOR OF LAW (2017) (cataloguing the ways in which federal government action, including the racist underwriting practices of the Home Owners' Loan Corporation (HOLC) and Federal Housing Administration (FHA) in home mortgage lending, was a driving force in creating residential racial segregation and housing-related wealth disparities in the United States between homeowners and tenants).

Credit Reporting Act (FCRA) and the wide range of statutes and regulations governing subsidized housing, are a clear acknowledgement of a robust federal role in regulating the relationship between housing providers and tenants. Even within the realm of rent regulation, federal action would not be unprecedented.

1. Legislative Authority: Historical Congressional Delegations

The United States has seen two previous occasions in which the federal government stepped in to regulate housing prices on a national level. The first was during World War II.[133] Prior to that, rent control had been the exclusive province of state and local governments, with cities like New York passing ordinances in the early 1920s to limit rents and provide tenant protections.[134] During World War II, however, with city populations swelling and resources being diverted away from housing manufacturing, Congress passed the Emergency Price Control Act of 1942 (EPCA).[135] The law established the Office of Price Administration, whose administrator, a presidential appointee and member of the executive branch, had broad discretion to achieve the EPCA's aim of stabilizing prices and rents.[136] The law required consultation with representative members of the relevant industry, issuance of regulations that were "generally fair and equitable," and the consideration of historical prices.[137] Under the EPCA, rents were regulated within predefined "defense rental area[s]"—a designation that ultimately extended to cover the entire nation and was repeatedly renewed until 1954.[138]

The federal government provided for the regulation of rents on a national basis a second time in the early 1970s. At a moment of high and rising inflation, Congress passed the Economic Stabilization Act (ESA) of 1970 "to stabilize the economy, reduce inflation, minimize unemployment, improve the Nation's competitive position in world trade and protect the purchasing power of the dollar . . . ."[139] Pursuant to the law, President Nixon authorized a nationwide freeze on wages and prices, including rents.[140] The

133. Baar, *supra* note 109, at 634.

134. *Id.* (describing these efforts as temporary emergency measures meant to respond to the housing crisis in the wake of World War I).

135. Pub. L. No. 77-421, 56 Stat. 23 (repealed 1947); *see also* Charles K. Gehnrich, *Stronger Than Ever: New York's Rent Stabilization System Survives Another Legal Challenge*, 90 FORDHAM L. REV. 831, 838–39 (2021) (explaining that the ECPA sought to prevent wartime profiteering in economic sectors detrimentally impacted by the war effort, including housing).

136. Yakus v. United States, 321 U.S. 414, 419–20 (1944).

137. EPCA § 2(a).

138. Baar, *supra* note 109, at 634.

139. Exec. Order No. 11723, 38 Fed. Reg. 15765 (June 15, 1973).

140. Baar, *supra* note 109, at 639–40.

move was part of a multi-phase program under the auspices of a newly created Cost of Living Council that operated until 1974.[141]

Both of these historical examples involved congressional delegations of authority to the executive branch and both faced legal challenges. In *Yakus v. United States*,[142] the Supreme Court upheld the EPCA against a challenge of the delegation's constitutionality.[143] Per Chief Justice Stone's opinion:

> Congress enacted the Emergency Price Control Act in pursuance of a defined policy and required that the prices fixed . . . should further that policy and conform to standards prescribed by the Act. The boundaries of the field of the Administrator's permissible action are marked by the statute. It directs that the prices fixed shall effectuate the declared policy of the Act to stabilize commodity prices . . . .
>
> The Act is thus an exercise by Congress of its legislative power. In it Congress has stated the legislative objective, has prescribed the method of achieving that objective—maximum price fixing—, and has laid down standards to guide the administrative determination of both the occasions for the exercise of the price-fixing power, and the particular prices to be established.[144]

The ESA withstood a similar legal challenge in federal court.[145] In that case, the U.S. District Court for the District of Columbia did not specify the constitutional power upon which the act survived, stating only that the passage of the ESA did not "lie[] outside the substantive powers of Congress."[146] The court held that *Yakus* remained good law and did not rest on an exercise of war powers.[147] There is thus precedent to support the proposition that Congress has the authority to pass federal rent regulation—at least for prescribed periods of time, with a clear objective, including

141. *See* DANIEL YERGIN & JOSEPH STANISLAW, THE COMMANDING HEIGHTS: THE BATTLE BETWEEN GOVERNMENT AND THE MARKETPLACE THAT IS REMAKING THE MODERN WORLD 63–64 (1998) (noting the Cost of Living Council handled implementation of the initial price controls and a second freeze in 1973 before the system was abolished in April 1974).

142. 321 U.S. 414 (1944).

143. *Id.* at 426–27.

144. *Id.* at 423.

145. The District Court for the District of Columbia held that *Yakus* controlled and that the law did not constitute an unconstitutional delegation to the President. Amalgamated Meat Cutters & Butcher Workmen of N. Am. v. Connally, 337 F. Supp. 737, 743, 745 (D.D.C. 1971).

146. *Id.* at 762.

147. *Id.* Given the interstate economic effects of the housing market, the Commerce Clause would likely provide at least one strong constitutional base upon which a modern Congress could regulate rents.

certain guiding standards, and when economic conditions indicate severe need.[148]

In the spirit of the EPCA and the ESA, U.S. Representative Jamaal Bowman has introduced the Emergency Price Stabilization Act, a bill which would do just that—authorize the President to impose price controls and regulations on various goods, including housing, for a limited time and pursuant to certain guiding standards.[149] Tenants, organizers, and advocates are working around the country to build the sort of political power needed to elect a supportive Congress.[150] The campaign is starting to show signs of movement—at the urging of advocates, fifty members of Congress, including Senator Elizabeth Warren, drafted a letter in January 2023 in support of efforts to limit rent increases nationally and "end corporate price gouging in the real estate sector."[151] Given the current political outlook, however, it does not appear that Congress is inclined to authorize housing price controls in the immediate future. There is also no telling how a rent regulation law would fare under the current U.S. Supreme Court—though it is noteworthy that a unanimous Rehnquist Court previously upheld a rent control ordinance against a Fifth Amendment takings challenge.[152]

2. Executive Action: Leveraging Federal Incentives

Barring an explicit delegation of authority from Congress, a President would need to rely on Article II powers to issue a written directive, like an executive order, that would carry the force of law in imposing rent stabilization and tenant protections nationally.[153] An argument that "the

148. *See* Block v. Hirsh, 256 U.S. 135, 157 (1921) (concluding that rent regulations are "put and justified only as a temporary measure. A limit in time, to tide over a passing trouble, well may justify a law that could not be upheld as a permanent change." (citations omitted)); *Yakus*, 321 U.S. at 423 (upholding the passage of the Emergency Price Control Act as a valid legislative power because Congress stated an objective, prescribed maximum price fixing to achieve that goal, and outlined standards to guide administrative decisions in furtherance of that goal).

149. Emergency Price Stabilization Act of 2022, H.R. 8658, 117th Cong. (2022); *see also* Press Release, Jamaal Bowman, *supra* note 17.

150. *See* Conor Dougherty, *The Rent Revolution Is Coming*, N.Y. TIMES (Oct. 15, 2022), https://www.nytimes.com/2022/10/15/business/economy/rent-tenant-activism.html [https://perma.cc/638J-7Q6X] (highlighting the effort of KC Tenants, which pairs "aggressive protests with traditional lobbying" to wield political power and push for tenant-friendly laws).

151. *See* Christian Britschgi, *Elizabeth Warren, Jamaal Bowman Want to Give Lina Khan the Power to Impose Rent Control on the Whole Country*, REASON (Jan. 18, 2023, 4:40 PM), https://reason.com/2023/01/18/elizabeth-warren-jamaal-bowman-want-to-give-lina-khan-the-power-to-impose-rent-control-on-the-whole-country/ [https://perma.cc/Z4UD-QYHH].

152. *See* Yee v. City of Escondido, 503 U.S. 519, 539 (1992).

153. *See* Kevin M. Stack, *The Statutory President*, 90 IOWA L. REV. 539, 550–52 (2005) (revealing that while the Constitution is silent on executive lawmaking and courts have failed to develop a uniform litmus test for ascertaining the validity of written directives, "the president's authority to issue orders . . . is by now beyond dispute").

executive power" includes the power to issue national rent stabilization would certainly be challenged in court and face significant scrutiny.

Nonetheless, even short of an executive order carrying the force of law, the executive branch could play an important role in providing incentives to states and localities to pass basic rent stabilization and tenant protection laws. The Biden Administration took an initial foray in this direction in January 2023 when it released The White House Blueprint for a Renters Bill of Rights (the "Blueprint").[154] The much-anticipated document, prepared by the Domestic Policy Council and the National Economic Council, resulted from months of meetings with tenants and housing advocates from around the country.[155] Heralded by some as a positive step in the right direction in that it acknowledged a federal role in protecting tenant rights,[156] others expressed disappointment.[157]

The Blueprint contained only a few concrete substantive provisions. For example, the Department of Housing and Urban Development (HUD) committed to issuing a notice of proposed rulemaking to provide residents of subsidized housing with thirty days' notice prior to lease termination as a result of rent nonpayment.[158] The Federal Trade Commission and the Consumer Financial Protection Bureau announced that they would release a Request for Information to gather data on how best to counter unfair

154. Press Release, White House, *supra* note 16; WHITE HOUSE BLUEPRINT, *supra* note 16.

155. Rachel Siegel, *White House Unveils New Tenant Protections Amid Soaring Rental Costs*, WASH. POST (Jan. 25, 2023, 2:22 PM), https://www.washingtonpost.com/business/2023/01/25/white-house-renter-protection/ [https://perma.cc/9W2H-ZCC2].

156. *See* Press Release, Diane Yentel, President and CEO, National Low Income Housing Coalition, NLIHC President and CEO Diane Yentel Statement on Biden-Harris Administration Blueprint for a Renters Bill of Rights (Jan. 25, 2023), https://nlihc.org/news/nlihc-president-and-ceo-diane-yentel-statement-biden-harris-administration-blueprint-renters [https://perma.cc/P8SX-PDZD] (describing the proposal as "an important step towards achieving President Biden's commitment to establishing a Renters Bill of Rights," while acknowledging "there is much more work still to be done"); *see also NHLP Analysis: The White House Blueprint for a Renter's Bill of Rights*, NAT'L HOUS. L. PROJECT (Feb. 2, 2023), https://www.nhlp.org/our-initiatives/nhlp-analysis-the-white-house-blueprint-for-a-renters-bill-of-rights/ [https://perma.cc/S8Y4-PF4L] ("[T]he White House's recognition of [these principles] is noteworthy. . . . The Biden administration, however, fell short of issuing any mandates. Many of the agency commitments within the Blueprint reflect agency initiatives that had been underway.").

157. *See* Fran Quigley, *Joe Biden's New Relief Plan for Renters Is Incredibly Weak*, JACOBIN (Jan. 30, 2023), https://jacobin.com/2023/01/joe-biden-renter-relief-plan-weakness-tenant-organizing-landlord-profits [https://perma.cc/6G7N-DG9W] (decrying the Administration for failing to bring immediate relief to millions of households behind on rent and issuing vague proclamations and commitments that are more aspirational than actionable); Siegel, *supra* note 155 (quoting tenant organizer Tara Raghuveer as stating: "The White House announcement introduces potential for agency-level action but falls short of issuing directives to regulate rent and address consolidation of the rental market . . . . There is much more the president can do to provide material relief to tenants . . . .").

158. WHITE HOUSE BLUEPRINT, *supra* note 16, at 17.

practices that prevent consumers from obtaining or maintaining housing.[159] The Federal Housing Finance Agency announced plans for a similar information solicitation effort.[160] By and large, however, the document called for more process, including: exploring agency authority (and reiterating current authority),[161] conducting stakeholder outreach,[162] releasing best practices,[163] hosting a workshop,[164] and engaging in further research.[165]

As one example of the Blueprint's general approach, President Biden campaigned on a promise to end so-called "source of income" discrimination against "Section 8" Housing Choice Voucher holders.[166] Federal fair housing law does not explicitly identify federal voucher holders as a protected class.[167] Thus, landlords across the United States claim the right to refuse to rent to voucher holders, notwithstanding the fact that the voucher would ensure the landlord receives the listed price for the apartment and is backed by an obligation to pay by the U.S. government.[168] Noting the significant fair housing implications—with source of income discrimination often used as a proxy for racial discrimination given that 70 percent of voucher holders are identified by HUD as "minority"[169]—jurisdictions around the country are increasingly passing laws that prohibit discrimination against voucher holders.[170]

159. *Id.* at 6; FED. TRADE COMM'N & CONSUMER FIN. PROT. BUREAU, TENANT SCREENING REQUEST FOR INFORMATION (2023), https://www.ftc.gov/system/files/ftc_gov/pdf/p235400_tenant_screening_rfi.pdf [https://perma.cc/V9KY-VM62].

160. WHITE HOUSE BLUEPRINT, *supra* note 16, at 6.

161. *Id.* at 12.

162. *Id.* at 6, 15.

163. *Id.* at 6, 12.

164. *Id.* at 6.

165. *Id.* at 18.

166. Kriston Capps, *Can Biden Deliver on His Promise to Expand Housing Vouchers?*, BLOOMBERG (Oct. 7, 2021, 3:57 PM), https://www.bloomberg.com/news/articles/2021-10-07/biden-pledge-to-boost-section-8-housing-faces-congress [https://perma.cc/5DZP-T52V].

167. Fair Housing Act, 42 U.S.C. § 3604 (prohibiting discrimination in housing on the basis of race, color, national origin, religion, gender identity and sexual orientation, familial status, and disability).

168. *Biden Wants to Offer More Housing Vouchers. Many Landlords Won't Accept Them.*, STATELINE (May 12, 2021, 12:00 AM), https://stateline.org/2021/05/12/biden-wants-to-offer-more-housing-vouchers-many-landlords-wont-accept-them/ [https://perma.cc/Q3DJ-TLVL]; Stephanie Wykstra, *Vouchers Can Help the Poor Find Homes. But Landlords Often Won't Accept Them.*, VOX (Dec. 10, 2019, 8:30 AM), https://www.vox.com/future-perfect/2019/12/10/21001692/housing-vouchers-discrimination-racism-landlords [https://perma.cc/7JZE-77YB].

169. *Assisted Housing: National and Local*, OFF. OF POL'Y DEV. & RSCH., U.S. DEP'T OF HOUS. & URB. DEV., https://www.huduser.gov/portal/datasets/assthsg.html [https://perma.cc/MGA3-R8P4] (choose "Housing Choice Vouchers" under "Select a Program"; then choose "% Minority" under "Select a Variable"; then follow "Get Results").

170. POVERTY & RACE RSCH. ACTION COUNCIL, EXPANDING CHOICE: PRACTICAL STRATEGIES FOR BUILDING A SUCCESSFUL HOUSING MOBILITY PROGRAM 2–6 (2023), https://www.prrac.org/pdf

How did the Blueprint address this important issue? It reiterated an already existing federal ban against source of income discrimination in the context of housing financed by the federal Low-Income Housing Tax Credit program, stated that HUD would look into issuing further guidance, and referenced a voluntary Fannie Mae pilot incentive program that covers only Texas and North Carolina.[171] A fact sheet released by the White House in conjunction with the Blueprint rollout stated that the Biden Administration is issuing a "Resident-Centered Housing Challenge" to housing providers. Preliminary commitments included Realtor.com agreeing to pilot a new tool to identify property owners that *voluntarily* welcome vouchers and the National Association of Realtors offering to develop "new resources for property managers" to "highlight ways they can incorporate resident-centered property management practices," such as accepting vouchers.[172]

Rather than such voluntary fox-guarding-the-coop approaches, how might the Biden Administration have helped to extend source of income protection across the United States?[173] Every year, the federal government provides billions of dollars of federal financial assistance to states and localities for housing and other community development activities.[174] The federal Fair Housing Act requires that HUD and recipients of such assistance affirmatively further fair housing (AFFH).[175] One week before the White House released the Blueprint, HUD issued a new proposed rule that would implement this AFFH provision.[176] The product of years of legal

/AppendixB.pdf [https://perma.cc/667U-DY37] (noting that as of May 2023, 21 states and the District of Columbia, as well as 129 cities and counties, had passed laws to prevent prejudice against housing market participants through source-of-income discrimination, with only a small number failing to cover housing vouchers). Moreover, Illinois, Oregon, Virginia, and Washington have gone a step further, adopting incentives to promote landlord acceptance of housing choice vouchers. *Id.* at 6.

171. WHITE HOUSE BLUEPRINT, *supra* note 16, at 12–13; *Expanded Housing Choice Initiative*, FANNIE MAE, https://multifamily.fanniemae.com/financing-options/specialty-financing/expanded-housing-choice-initiative [https://perma.cc/66L8-WXYW].

172. Press Release, White House, *supra* note 16.

173. In addition to the federal incentive approach discussed in this Essay, an alternative approach would be for HUD to simply interpret the federal Fair Housing Act as barring source of income discrimination. While this might run into questions under the current Supreme Court's evolving "Major Questions Doctrine" jurisprudence, a plausible case can be made that allowing discrimination against voucher holders, the majority of whom are non-white, runs afoul of federal fair housing law as currently written.

174. In FY 2023, the Community Development Block Grant Program is funded at $3.3 billion. *See* Michael Matthews, *Support Local Development and Infrastructure Projects: The Community Development Block Grant (CDBG) Program*, NAT'L ASS'N CNTYS. (Feb. 1, 2023), https://www.naco.org/resources/support-local-development-and-infrastructure-projects-community-development-block-grant-1 [https://perma.cc/8ZRR-H5SA].

175. 42 U.S.C. § 3608(d), (e)(5).

176. Affirmatively Furthering Fair Housing, 88 Fed. Reg. 8516 (proposed Feb. 9, 2023) (to be codified at 24 C.F.R. pts. 5, 91–93, 570, 574, 576, 903, 983); *see also* Press Release, U.S. Dep't of Hous. & Urb. Dev., HUD Announces New Proposed "Affirmatively Furthering Fair Housing" Rule, Taking a Major Step Towards Rooting Out Longstanding Inequities in Housing and Fostering Inclusive

and regulatory wrangling,[177] the new rule requires HUD program participants to develop a set of "Equity Plan" goals intended to promote fair housing in the given jurisdiction.[178]

While a positive development, the new AFFH rule falls prey to a similar problem as the Blueprint—it provides for significant process while requiring no particular substantive rights. Recent scholarship has argued that, in addition to requiring jurisdictions to engage in an open-ended planning process, the AFFH rule should also include a substantive component, identifying certain practices that are presumptively deemed to be obstacles to fair housing.[179] Noah Kazis has convincingly argued that large lot zoning is one example of a practice that should be on the list.[180] The lack of source of income discrimination laws should be another. A state or city that allows such discrimination to continue would be presumptively in violation of the AFFH provision, jeopardizing their share of billions of dollars in federal block grants.[181]

Zooming out from the particulars of source of income laws, one could imagine deploying a similar approach to encourage states and localities to adopt some package of rent stabilization and associated tenant protections—i.e., leveraging the risk of losing the significant funding the federal government provides annually. Could a jurisdiction that lacks anti-rent gouging or good cause eviction protections be presumptively deemed to be in violation of the AFFH provision? It would take some willful reimagining on the part of HUD officials, but when one considers the racially disparate

Communities (Jan. 19, 2023), https://www.hud.gov/press/press_releases_media_advisories/hud_no_23_013 [https://perma.cc/M3SQ-B7BM].

177. *See* Katy O'Donnell, *HUD Revamps Obama-Era Discrimination Rule in Rebuke to Trump*, POLITICO (Jan. 19, 2023, 11:31 AM), https://www.politico.com/news/2023/01/19/hud-revamps-obama-era-discrimination-rule-in-rebuke-to-trump-00078539 [https://perma.cc/MB3N-AXBU] (tracing the starkly different approaches to the affirmatively furthering fair housing rule between the Obama and Trump Administrations, with President Biden's HUD reincorporating much of the regulation's framework from 2015).

178. Affirmatively Furthering Fair Housing, 88 Fed. Reg. at 8517; *see also* Press Release, U.S. Dep't of Hous. & Urb. Dev., *supra* note 176.

179. *See* Noah M. Kazis, *Fair Housing, Unfair Housing*, 99 WASH. U. L. REV. ONLINE 1, 16 (2021) ("HUD should develop a list of specific housing practices—public and private—deemed especially likely to impede fair housing and therefore subject to heightened administrative scrutiny. This list would include practices historically or quantitatively associated with discrimination, segregation, and other forms of unfair housing, and would be regularly revised to reflect what HUD learned from research, enforcement actions, and grantees' own fair housing planning efforts. Jurisdictions could maintain those listed policies (or allow private practices to continue). But they would need to justify why, in their specific context and in careful detail, such policies would not make housing less fair, or fully mitigate the fair housing impacts of those choices.").

180. *Id.*

181. Of course, some jurisdictions might opt to forgo the federal financial assistance. This proposal is likely to be more persuasive in jurisdictions at least already somewhat politically divided on the question of rent stabilization.

manner in which evictions impact U.S. households,[182] the idea is not farfetched. An alternative approach would be to include a presumption that general statewide prohibitions preempting any form of rent regulation are contrary to the AFFH.

The AFFH mechanism is simply one example of how the federal government might leverage state and local funding to provide incentives for tenant protections—there are likely other federal financing hooks as well.[183] This approach would not result in a perfectly even approach to rent stabilization across all fifty states. But while the political momentum builds for more uniform action by Congress, leveraging federal funding could help move the needle in those borderline jurisdictions that are currently engaged in legislative battles over state and local laws.

CONCLUSION

The terrain has shifted under the feet of tenants in the United States. Whereas it was once commonplace to rent an apartment from a local "mom and pop" landlord, rental properties are increasingly owned by corporate entities—a trend that shows no signs of letting up. Corporate landlords face different economic incentives and pressures, and operate under a veil of anonymity, unexposed by traditional title registries and facilitated by increasingly diffuse ownership structures. Evidence indicates that corporate owners are often relatively poor stewards of rental housing—and regardless of landlord type, tenants in the United States are suffering from high levels of housing insecurity.

YIMBYs are right: we should build more housing. Those who advocate for income supports are right too: the minimum wage should be increased. Neither intervention dispels the need for rent stabilization and tenant protections, which should be viewed as complementary—mechanisms that prevent families from losing their home regardless of market fluctuations or landlord whims. A robust package of land use interventions that provide a reasonable return to owners, relative stability to tenants, and minimal

182. *See* Peter Hepburn, Renee Louis & Matthew Desmond, *Racial and Gender Disparities Among Evicted Americans*, EVICTION LAB (Dec. 16, 2020), https://evictionlab.org/demographics-of-eviction/ [https://perma.cc/8QTQ-R824] ("Black renters experienced the highest average rates of eviction filing (6.2%) and eviction judgment (3.4%). By contrast, the average eviction filing rate among white renters was 3.4% and the average eviction rate was 2.0%. Nearly one in four [B]lack renters lived in a county in which the [B]lack eviction rate was more than double the white eviction rate.").

183. Transportation funding likely could also provide leverage, particularly given the racially discriminatory manner in which transportation funding has historically been deployed in the U.S. *See, e.g.*, Robert D. Bullard, *Addressing Urban Transportation Equity in the United States*, 31 FORDHAM URB. L.J. 1183, 1188–89 (2004) (noting transportation benefits and burdens are not randomly distributed across population groups, as "disamenities" have posed a greater harm to people of color and lower socioeconomic individuals).

obstacles to new development, while not perfect, is an attainable improvement over the status quo.

After decades of relative dormancy, states and cities around the United States are returning to rent stabilization as an attractive policy option. The federal government has an important role to play as well. Historical precedent indicates that Congress has the authority to regulate rents in times of severe need. Organizing efforts are working to build the political power to persuade Congress to act. In the meantime, rather than governing in the largely aspirational poetry of the White House Blueprint, the Biden Administration could leverage billions of dollars of federal assistance to help tip the scales toward rent stabilization in states and localities around the United States. The unprecedented nature of the shifting rental market will require adaptive and creative responses in public policy to afford tenants the basic level of housing security that all households deserve.