

WEB OF INTEREST: REFRAMING THE CONVERSATION AROUND  
UNAFFORDABLE HOUSING

*Hilary Silvia & Linda Christiansen*

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*Hilary Silvia\* & Linda Christiansen†*

*“Next to bombing, rent control seems to be the most efficient technique so far known for destroying cities.”<sup>1</sup> Assar Lindbeck*

### Abstract

*Property rights, often described as a bundle, may more accurately be characterized as a web of interests, considering the wider spectrum of stakeholders, including owners, tenants, neighbors, communities, and society. Ironically, research shows that government-imposed price ceilings on rent often produce the opposite result of their intended purpose by keeping housing prices low for those in the regulated area and raising prices in the surrounding areas. Additionally, the quality and quantity of housing declines in areas with rent regulations, negatively (albeit unintentionally) impacting the broader community. Ultimately, rent control is a flawed solution to affordable housing problems.<sup>2</sup> Many argue rent control serves as a housing subsidy, but, whereas subsidies usually transfer financial support from the government directly to citizens, in the case of rent control, the subsidy flows from private landlords to their rent-controlled tenants. The result, ultimately, is that the “public pays indirectly through lower property values and higher, non-controlled rents*

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<sup>1</sup> ASSAR LINDBECK, *THE POLITICAL ECONOMY OF THE NEW LEFT: AN OUTSIDER’S VIEW* 39 (2nd ed. 1997).

<sup>2</sup> Sharon Yamen, Hilary Silvia, & Linda Christiansen, *In Defense of the Landlord: A New Understanding of the Property Owner*, 50 *URB. LAW.* 273, 286 (2020).

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*that typically result from rent control.”<sup>3</sup> This article explores the impact of price controls governing the landlord-tenant relationship on a diverse array of stakeholders within the web of interest.*

## INTRODUCTION

Suppose you inherit \$200,000 and wish to invest it for your retirement. You are considering investment options, including mutual funds, CDs, tangible assets like gold, and even cryptocurrency. Then imagine the townhouse next to yours comes onto the market for \$400,000. You check local rental prices and determine that even after paying property taxes, insurance, interest, homeowner association dues, and maintenance, you could earn a reasonable rate of return. This investment would be risky because not only would you have to borrow half the purchase price, but also your investment portfolio risk in local real estate is not as diversified as an investment in an index mutual fund, and because working with tenants can involve damage to the property and eviction concerns. Additionally, real estate requires more active work and supervision (or the hiring of people to do that work), as opposed to passive investments. You decide the higher rate of return is worth the risk. After owning the property for a short while, the state or local government passes rent control regulations that include limits on rent increases. The rules also limit your rights to evict tenants in the event you decide to sell, limiting your potential buyer pool only to those who would also hold it as an investment property, resulting in lower demand and possibly a lower sales price. Your costs continue to rise with inflation, and other investment returns not controlled by regulation continue to grow at market rates. Do you regret your decision to become a landlord? Would you ever invest in rental property again?

In many states, the local economy and market forces alone serve to shape the price controls governing the landlord-tenant relationship. A slumlord in a market with ample supply, and in the age of Yelp, public reviews, and social media, will experience adverse economic consequences that, theoretically, would provide impetus to resolve issues necessary to regain a competitive position in the marketplace.<sup>4</sup> However, densely populated metropolitan areas, such as Los

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<sup>3</sup> Stephanie M. Stern, *Rent Control Sharing*, 13 LAW & ETHICS HUM. RTS. 141, 142–43 (2019) (internal citations omitted).

<sup>4</sup> Connor Group v. Raney, 3:14-CV-283, 2015 WL 13651287, at \*2 (S.D. Ohio Feb. 24, 2015) (landlord sued tenant for intentional and tortious interference with prospective business relationships, alleging that tenant’s reviews on public review platforms and social media platforms caused “damage to their business, trade, and reputation,” acknowledging

Angeles, Chicago, and New York, face perpetual short supply and high demand. As a result, rents skyrocket, and tenants are forced to tolerate less habitable conditions. Many localities have implemented various programs, including rent control and rent stabilization, to address this problem.<sup>5</sup> As we explore throughout this article, the imposition of rent control, while perhaps well-intentioned, does not always achieve the intended outcome.

## I. THE CONCEPT OF HOME AND THE BUSINESS OF HOUSING

A discussion of rent control<sup>6</sup> necessarily requires an exploration of the concept of home and how the concept of home intersects with the business of housing. Home is both a physical necessity and a societal value. The business of housing is less personal, ostensibly ruled like any other business by balance sheets and impersonal choices around profits, losses, and compliance with laws and regulations. Rent control lives at this intersection of home and housing, with a goal of regulating the business in a way that guarantees financially accessible housing to those who need it. In discussing the nature and structure of real property, Craig Anthony (Tony) Arnold explains that “[l]and has both natural meaning and social meaning.” The natural meaning of land recognizes that “land exists as an integral, interconnected part of nature” which “had an existence and set of characteristics before any humans interacted with it.”<sup>7</sup> The social meaning of land recognizes that societies often attach nonphysical, sentimental or values-driven attributes to land, recognizing that land may be sacred or holy, the place where memories are made, home.<sup>8</sup> This structure closely aligns with the concept of home and community, understanding that a specific piece of real property is part of a larger ecological whole. That the physical construct built on the property signifies more than a mere compilation of wood, concrete, and nails, but rather the larger concept of home.

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the impact of individual consumer tenant reviews on landlord performance in local rental markets).

<sup>5</sup> *Rent Control Laws by State*, NAT’L MULTIFAMILY HOUS. COUNS. (July 19, 2022), <https://www.nmhc.org/research-insight/analysis-and-guidance/rent-control-laws-by-state/>.

<sup>6</sup> In this article, we will use the term “rent control” to include the various rent control and rent stabilization laws that restrict or prohibit landlords from increasing rent as they desire.

<sup>7</sup> Craig Anthony Arnold, *The Structure of the Land Use Regulatory System in the United States*, 22 J. LAND USE & ENVTL. L. 441, 462 (2007) (citing R. EDWARD GRUMBINE, GHOST BEARS: EXPLORING THE BIODIVERSITY CRISIS 239–40 (1992); O.J. REICHMAN, KONZA PRAIRIE: A TALLGRASS NATURAL HISTORY (1987)).

<sup>8</sup> Arnold, *supra* note 7 at 464.

While one's home is an individual possession, the concept of home is possessed by all in society. This collective ownership of the notion—the feeling—of home, the recognition that it is a fundamental need, drives the political forces that seek to ensure it remains affordable and financially accessible to those needing to be housed.

*A. A Brief History of Rent Control Through the Lens of New York City*

Rent control in American history can be traced back to the politically charged environment of the post-WWI era. In the face of aggressively escalating rents, New York City enacted its first rent control laws, the April Laws, in the 1920s to allow tenants to challenge “unjust, unreasonable and oppressive rent hikes.”<sup>9</sup> However, as long as the rent hike was under twenty-five percent (25%), the burden fell upon the tenant to prove the adjustment was unlawful. Many argued that this requirement on its own was unjust and unreasonable as the tenant is not in the business of litigating rent hikes, and the landlord is in exclusive possession of all the relevant evidence.<sup>10</sup> Following a series of eviction cases, Emergency Rent Laws were passed that shifted the burden to landlords, thus providing tenants some relief by making rent hikes and evictions more difficult. During the period after the passage of the Emergency Rent Laws, NYC saw an increase in apartment construction followed by a higher vacancy rate. In 1929, there was a general consensus that the housing emergency had ended and tenants were left without rent control.

The onset of WWI led to more rent regulations. In 1942, Congress passed the Emergency Price Control Act (“EPCA”)<sup>11</sup> aimed at preventing wartime profiteering in sectors including housing. However, the EPCA did not institute a rent ceiling, and wartime civil unrest along with political pressure and rising rents led to retroactive rent-freezing.<sup>12</sup> Rent regulations continued post-war, although the Stabilization Extension Act of 1944 allowed certain areas of previously

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<sup>9</sup> Guy McPherson, *It's the End of the World as We Know It (and I Feel Fine): Rent Regulations in New York City and the Unanswered Questions of Market and Society*, 72 *FORDHAM L. REV.* 1125, 1131 (2004) (citing Robin Reisig, *Rent Regulation*, *GOTHAM GAZETTE* (March 9, 2003), [www.gothamgazette.com/article/issueoftheweek/20030309/200/305](http://www.gothamgazette.com/article/issueoftheweek/20030309/200/305)).

<sup>10</sup> Joseph A. Spencer, *New York City Tenant Organizations and the Post-World War I Housing Crisis*, in *The Tenant Movement in New York City, 1904–1984* (Ronald Lawson ed., 1986).

<sup>11</sup> Emergency Price Control Act of 1942, 50a U.S.C. §§ 901-946 (1942).

<sup>12</sup> McPherson, *supra* note 9 at 1134.

controlled housing to be released from rent controls in places no longer at risk for housing shortages and rent hikes. In 1946, the EPCA was amended to remove all controls, and in 1947 was replaced with the Housing and Rent Act of 1947, which lifted controls on housing built after February 1, 1947, and extended controls on older housing. By 1961, NYC was the only city in the country that continued a “rent control regime.”<sup>13</sup> In 1962, New York State eliminated state rent control and authorized NYC to enact local rent regulations.

In 1969, New York City enacted the Rent Stabilization Law of 1969, which included regulations on the buildings constructed after February 1, 1947. It also established the Rent Guidelines Board, which had the power to set rent adjustments and increases. By the end of 1973, as rent regulations were phased out across the state, “300,000 rent-controlled units and approximately 88,000 rent-stabilized units were deregulated.”<sup>14</sup>

In 1971, the Urstadt Law was enacted and continues to inform the modern debate around rent control. Named after then-Governor Nelson Rockefeller’s housing commissioner, Charles Urstadt, the law forbade New York municipalities from enacting any rent regulations that would be more stringent than any passed by the State legislature.<sup>15</sup> This meant that NYC no longer had the power to further strengthen rent control. Inflation and political changes, including Rockefeller’s 1973 resignation, causing rents to skyrocket. In response, New York State enacted the Emergency Tenant Protection Act of 1974 (“ETPA”), which stabilized units that were previously de-regulated in 1971, and allowed municipalities like NYC to declare a housing emergency where vacancy rates fell below five percent.<sup>16</sup>

As evident from history, rent control emerged from a cauldron of challenging economic and political factors, fueled by pressure from tenants, landlords, and politicians. In 1972, the social welfare aspect of rent control was highlighted by an exemption for low-income, elderly, and disabled tenants.<sup>17</sup> The Rent Regulation Reform Act of 1993 attempted to exclude the wealthy from the benefits of rent control by instituting luxury decontrol. The slow decay of rent protections continued in the years after. The Rent Regulation Reform Act of 1997 reduced the income vacancy threshold, reduced the categories of family members eligible for succession, and provided landlords with a special right to increase rent for low-rent apartments. In December 2000, the Rent Stabilization Code was

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<sup>13</sup> *Id.* at 1135.

<sup>14</sup> *Id.* at 1137.

<sup>15</sup> Joe Lamport, *Repealing the Urstadt Law*, GOTHAM GAZETTE (Jan. 25, 2005), <https://www.gothamgazette.com/demographics/2727-repealing-the-urstadt-law>.

<sup>16</sup> McPherson, *supra* note 9 at 1138–39.

<sup>17</sup> *Id.* at 1139.

amended to provide landlords with new powers of eviction and for increasing rent on vacant apartments. Since then, New York has passed numerous rent regulation laws, including in 2003, 2011, and 2015. Most recently, New York passed the Housing Stability and Tenant Protection Act of 2019 (“HSTPA”).<sup>18</sup> The HSTPA has been described as sweeping legislation that expanded protections for NYC renters, including eliminating landlord-friendly vacancy decontrols and rent hikes between tenants, and limiting the costs landlords can pass on to tenants for improvements.<sup>19</sup> Landlord groups immediately challenged the law, stating that the action violated constitutional protections, such as the government taking of private property.<sup>20</sup> Although the Second Circuit Court of Appeals agreed with the plaintiffs regarding some of the issues with rent control, the court is bound by Supreme Court precedent.<sup>21</sup>

As of 2017, NYC had approximately 22,000 rent-controlled apartments and 966,000 rent-stabilized apartments, with updated figures from the 2021 census forthcoming.<sup>22</sup>

The major debate around rent control continues to raise questions about its constitutionality and purpose. The Ninth Circuit reopened this debate in *Hall v. City of Santa Barbara* by outlining a “standard of review under which Santa Barbara's ordinance would likely result in an uncompensated and therefore

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<sup>18</sup> *Rent Laws of 2019*, NYC RENT GUIDELINES BOARD, <https://rentguidelinesboard.cityofnewyork.us/resources/rent-regulation-laws/rent-laws-of-2019/> (last visited Nov. 12, 2022).

<sup>19</sup> NYU FURMAN CTR., HOUSING STABILITY AND TENANT PROTECTION ACT: AN INITIAL ANALYSIS OF SHORT-TERM TRENDS (July 2021); Will Parker and Jimmy Vielkind, *New York Passes Overhaul of Rent Laws, Buoying Wider Movement to Tackle Housing Crunch*, WALL ST. J. (June 14, 2019), <https://www.wsj.com/articles/new-york-passes-overhaul-of-rent-laws-revving-up-nationwide-movement-to-tackle-housing-crunch-11560544718>.

<sup>20</sup> Josh Barbanel & Will Parker, *Landlords Challenge New York's Rent-Control Law in Federal Court*, WALL ST. J. (July 16, 2019), <https://www.wsj.com/articles/landlords-challenge-new-yorks-rent-control-law-in-federal-court-11563274921>.

<sup>21</sup> Laura Kusisto, *Appeals Court Voices Skepticism of Challenge to New York Rent Regulations*, WALL ST. J. (Feb. 16, 2022), <https://www.wsj.com/articles/appeals-court-to-weigh-new-york-rent-regulations-11645015300>.

<sup>22</sup> *Rent Control FAQ*, NYC RENT GUIDELINES BOARD, <https://rentguidelinesboard.cityofnewyork.us/resources/faqs/rent-control/> (last visited Nov. 12, 2022); see also *About this Survey*, U.S. CENSUS BUREAU (Dec. 9, 2021), <https://www.census.gov/programs-surveys/nychvs/about.html> (explaining that the results of the 2021 New York City Housing and Vacancy Survey (“NYCHVS”) will be published in 2022).

unconstitutional taking of property”.<sup>23</sup> Prior to this, *Birkenfeld v. City of Berkeley*,<sup>24</sup> along with other cases, upheld rent control laws as long as they were reasonable and for a legitimate government purpose. In *Birkenfeld*, the California Supreme Court removed the emergency requirement while upholding the constitutionality of rent control. It argued that the constitutionality depended on an “existence of a housing shortage and its concomitant ill effects of sufficient seriousness to make rent control a rational curative measure.”<sup>25</sup>

Through September 2021, approximately 200 municipalities and two states have a form of rent regulation.<sup>26</sup> Rent control laws and proposals have proliferated since the government shutdowns that began in March 2021. The proposals appear at both the state and local government levels<sup>27</sup>, and their efficacy is often debated. For example, although Oregon has had rent control legislation on the books since early 2019,<sup>28</sup> the Oregon Center for Public Policy reports that half of Oregon still pays more than 30% of their income towards rent.<sup>29</sup>

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<sup>23</sup> Mary E. McAlister, *Hall v. City of Santa Barbara: A New Look At California Rent Controls and the Takings Clause*, 17 *ECOLOGY L.Q.* 179, 179–214 (1990).

<sup>24</sup> *Birkenfeld v. City of Berkeley*, 550 P.2d 1001 (Cal. 1976).

<sup>25</sup> *Id.* at 1024.

<sup>26</sup> EDWARD G. GOETZ, ANTHONY DAMIANO, PETER HENDEE BROWN, PATRICK ALCORN, & JEFF MATSON, U. MINN., MINNEAPOLIS RENT STABILIZATION STUDY (2021).

<sup>27</sup> Editorial Board, *Rent Control Backfires Again in St. Paul*, WALL ST. J. (Nov. 10, 2021), <https://www.wsj.com/articles/rent-control-backfires-again-in-st-paul-ballot-initiative-11636584789>; Goetz et al., *supra* note 26; Liam Dillom, *Even in a Hot Market, L.A. Won't Allow Rent Hikes for Most Tenants Until 2023*, L.A. TIMES (Jan. 3, 2022), <https://www.latimes.com/homeless-housing/story/2022-01-03/even-in-hot-market-most-l-a-tenants-wont-face-rent-increases-for-at-least-another-year>; Will Parker, *St. Paul Voters to Decide on Sweeping Rent Control*, WALL ST. J. (Oct. 30, 2021), <https://www.wsj.com/articles/st-paul-voters-to-decide-on-sweeping-rent-control-11635593401>; Christy Murdock, *California Rent Increase Laws for 2022*, RENTSPREE (Sep. 9, 2021), <https://www.rentspree.com/blog/landlord-tips/california-rent-increase-laws/>.

<sup>28</sup> *Oregon's Rent Control Law, Explained*, BUNGALO (Feb. 1, 2022), <https://bungalow.com/articles/oregons-rent-control-law-explained#rent-control-in-oregon> (last visited June 7, 2022); Lauren Dake, *Rent Control Is Now The Law In Oregon*, OPB (Feb. 28, 2019), <https://www.opb.org/news/article/oregon-rent-control-law-signed/>.

<sup>29</sup> Daniel Hauser & Juan Carlos Ordonez, *A State Rent Assistance Program Would Strengthen Oregon Communities*, OREGON CTR. PUB. POL'Y (Sep. 23, 2019), <https://www.ocpp.org/2019/09/23/state-rent-assistance-program/>.

## II. APPLYING THE WEB OF INTEREST TO RENT CONTROL

In recognition of the relationship between property owned by an individual and that property's impact on society and the environment, some scholars now describe property rights as a "web of interests" rather than a "bundle of rights."<sup>30</sup> This "web of interests" describes the "set of interconnections among persons, groups, and entities each with some stake in an identifiable (but either tangible or intangible) object, which is at the center of the web. All of the interest holders are connected both to the object and to one another."<sup>31</sup> In the context of the residential owner-resident relationship, the owner is connected to the object as the titleholder, in addition to any personal, emotional attachment the owner might identify with the property. The tenant is physically connected to the property as the occupant, as well as emotionally connected given the noted psychological concept of home.<sup>32</sup> The owner and tenant are connected to each other contractually, and their relationship is governed both by contract and state law. Other stakeholders in the web of interests include neighboring property owners and society at large, which may bear the financial and ethical burdens associated with financially inaccessible housing. This has motivated certain jurisdictional groups within the larger American society, through the electoral and legislative processes, to impose various restrictions on the use of private land for the benefit of others in the community, including rent control.<sup>33</sup>

The difficulty with rent control is that, despite the many stakeholders within the web of interest, the burden falls solely upon the property owner to absorb the cost of limited rents as governments turn to rent control to address unaffordability in housing.

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<sup>30</sup> Craig Anthony Arnold, *The Reconstitution of Property: Property as a Web of Interests*, 26 HARV. ENV'T L. REV. 281, 333 (2002); See also, Katrina M. Wyman, *The New Essentialism in Property*, 9 J. LEGAL ANALYSIS, 183, 183–246, (2017).

<sup>31</sup> *Id.* at 333.

<sup>32</sup> Frank T. McAndrew, *Home Is Where the Heart Is, but Where Is "Home"?*, PSYCHOL. TODAY (Aug. 3, 2015), <https://www.psychologytoday.com/us/blog/out-the-ooze/201508/home-is-where-the-heart-is-where-is-home#:~:text=%E2%80%9CHome%E2%80%9D%20is%20the%20place%20where,a%20predictable%20and%20secure%20place>.

<sup>33</sup> Kathleen F. Gaffney, *Rent Control and its Effect on the Availability of Rental Units* (Mar. 15, 2021) (B.A. thesis, University of California, Santa Barbara) (on file with Department of Economics, University of California, Santa Barbara).

A. *Economic Impact of Rental Housing Regulations and Interventions*

The concept of home collides with the business of housing through sheer economic realities. Because all those impacted are stakeholders within the web of interests, any solution crafted must address global concerns further defined by the science of market forces, constitutional considerations, and fundamental human rights. In the face of housing shortages and skyrocketing rents, whether triggered by war or pandemic, the question becomes, which recipe is the correct one to avoid disproportionately burdening landlords as the single-source solution for a multi-source problem? And, when addressing unaffordable housing, how can governing bodies enact legislation and implement programs that can detect and deter tenant abuses and ensure that the units are occupied by the intended program recipients.

B. *Landlords: The Single-Party Solution to Affordable Housing*

In the face of unaffordable housing, a recognized problem with many contributing factors, governments choosing to impose rent control craft a narrow solution holding only one category of society—the property owners—responsible. However, just as one house is part of a broader neighborhood, and one neighborhood is part of a broader community, the problem of unaffordable housing is part of a broader societal issue involving a distributed network of economic and political forces, income inequality, and opportunity gaps.<sup>34</sup>

Rent control is a flawed vehicle to achieve the stated purpose, namely, to provide affordable housing to residents at relatively consistent, below-market rates.<sup>35</sup> Rent control places a disproportionate burden upon property owners, who are just one of many market participants and stakeholders within the business of housing. Imposing price ceilings on rental homes as the solution to unaffordable housing does little to address broader issues that collide to create unaffordability in housing. Other socio-economic factors play predominant roles, including the

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<sup>34</sup> Eileen Diaz McConnell, *Who Has Housing Affordability Problems? Disparities in Housing Cost burden by Race, Nativity and Legal Status in Los Angeles*, 5 RACE & SOC. PROBS. 173, 173–190 (2013).

<sup>35</sup> Walter Block, *Rent Control*, LIBR. OF ECON. & LIBERTY, <https://www.econlib.org/library/Enc/RentControl.html> (last visited June 7, 2022); Prasanna Rajasekaran et al., *Rent Control: What Does the Research Tell Us about the Effectiveness of Local Action?* URBAN INSTITUTE (Jan. 16, 2019); *Reassessing Rent Control: Its Economic Impact in a Gentrifying Housing Market*, 101 HARV. L. REV. 1835 (1988); Stern, *supra* note 3; Zachary Bray, *The New Progressive Property and the Low-Income Housing Conflict*, 2012 B.Y.U. L. REV. 1109, 1142 (2012).

achievement gap, income inequality, unlivable minimum wage, and access to education and job opportunities. In this way, rent control is essentially an ineffective single-party solution to a problem with many causes.

The burdens of real property ownership are many. Beyond the financial burden attendant to acquisition and maintenance, property owners undertake continuing obligations to comply with requirements arising under laws and regulations, including those related to tax, nuisance, zoning and land use, the environment, premises liability, and rent control.<sup>36</sup> A common thread among these regulations is the imposed obligation to ensure that one's property, while her own, continues to serve the interests of the larger society within which it rests.

Legally imposed restrictions on the use of private land to serve the interests of society come in many forms. Property taxes provide funds for local schools.<sup>37</sup> Zoning and land-use regulations control the types and intensity of permitted property use, often directly impacting the surrounding environment and human health.<sup>38</sup> Environmental and conservation laws govern how humans interact with their environment and create rules to protect environmental and human health.<sup>39</sup> Eminent domain permits the government to take private property to serve a "public purpose."<sup>40</sup> Rent stabilization and rent control laws limit the maximum rent a property owner may charge residential tenants, as well as the circumstances under which a landlord may dispossess tenants of the property.<sup>41</sup> The difficulty with rent control is that, despite the large community of interests involved in its management, the burden falls upon the owner, alone, to absorb both the cost and the loss of the owner's right to possession as governments turn to rent control to address unaffordability in housing.

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<sup>36</sup> Wyman, *supra* note 30.

<sup>37</sup> MARK PRICE, KEYSTONE RES. CTR., WHO PAYS FOR SCHOOL PROPERTY TAX ELIMINATION? AN ANALYSIS OF SCHOOL PROPERTY TAX BURDENS IN PENNSYLVANIA (2017).

<sup>38</sup> Arnold, *supra* note 30 at 345–50.

<sup>39</sup> *Our Mission and What We Do*, EPA, <https://www.epa.gov/aboutepa/our-mission-and-what-we-do> (last visited Nov. 13, 2022).

<sup>40</sup> Steven P. Lanza, Thomas J. Miceli, C. F. Sirmans, & Moussa Diop, *The Use of Eminent Domain for Economic Development in the Era of Kelo*, 27 *ECON. DEV. Q.* 352, 352–362 (2013).

<sup>41</sup> LISA STURTEVANT, NAT'L MULTIFAMILY HOUS. COUNCIL, THE IMPACTS OF RENT CONTROL: A RESEARCH REVIEW AND SYNTHESIS (May 2018).

C. *The Disproportionate Effect of Rent Control on “Mom & Pop Landlords”*

“Many have questioned the wisdom of rent control, and no consensus exists as to whether it is good public policy.”<sup>42</sup> Rent control regulations are inarguably tenant protection devices, and the impact on landlords is rarely in focus. While all landlords of rent-controlled properties are impacted, the effect is particularly burdensome on ‘mom and pop’ landlords, who own a substantial number of rental units. The 2015 American Housing Survey<sup>43</sup> reported that the U.S. had over 48 million rental units, with 43.9 million units being occupied.<sup>44</sup> Included in these units were 22.7 million units owned by individuals, most of which were single-family homes or duplexes.<sup>45</sup> The remaining units are owned by business entities that are more likely to hold larger apartment complexes.<sup>46</sup> In 2021, the National Association of Realtors (“NAR”) reported that the individual property owners are impacted more than their corporate counterparts by COVID and government regulation.<sup>47</sup> The NAR defined ‘mom & pop’ property owners as those who own fewer than 10 properties, which usually have between one and four units per

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<sup>42</sup> *Santa Monica Beach, Ltd. v. Super. Ct.*, 968 P.2d 993, 999 (Cal. 1999) (citing Richard A. Epstein, *Rent Control and the Theory of Efficient Regulation*, 54 BROOK. L. REV. 741 (1988)).

<sup>43</sup> See 2015 American Housing Survey, U.S. CENSUS BUREAU, <https://www.census.gov/programs-surveys/ahs/data/interactive/ahstablecreator.html> (last visited June 8, 2022).

<sup>44</sup> Todd M. Richardson, *Landlords*, U.S. DEP’T OF HOUS. & URB. DEV. (June 11, 2018), <https://www.huduser.gov/portal/pdredge/pdr-edge-frm-asst-sec-061118.html>.

<sup>45</sup> Drew Desilver, *As National Eviction Ban Expires, a Look at Who Rents and Who Owns in the U.S.*, PEW RESEARCH CENTER (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/>; Richardson, *supra* note 44.

<sup>46</sup> Kristin Broady, Wendy Edelberg & Emily Moss, *An Eviction Moratorium Without Rental Assistance Hurts Smaller Landlords, Too*, BROOKINGS (Sep. 21, 2020), <https://www.brookings.edu/blog/up-front/2020/09/21/an-eviction-moratorium-without-rental-assistance-hurts-smaller-landlords-too/>; Desilver, *supra* note 45; Will Parker & Andrew Ackerman, *Eviction Moratorium’s Renewal Squeezes Small Landlords*, WALL ST. J. (Aug. 6, 2021), <https://www.wsj.com/articles/eviction-moratoriums-renewal-squeezes-small-landlords-11628247601>.

<sup>47</sup> *Property Owners Continue to Struggle Amid Pandemic Environment*, NAT’L ASS’N OF REALTORS (Aug. 14, 2021), <https://www.nar.realtor/rental-assistance/property-owners-continue-to-struggle-amid-pandemic-environment>.

property. These individuals own 72.5% of single-unit rental properties.<sup>48</sup> These investors supply half the rental housing in the country yet about 30% have household incomes of \$90,000 or less.<sup>49</sup> For owners who earn less than \$50,000, rent income comprises nearly 20% of household income.<sup>50</sup>

In theory, rent control seeks to protect low-income renters from ‘rich’ landlords. However, most of the controls and limitations apply to both low and high-income tenants, as well as low and high wealth and income property owners.<sup>51</sup> Requirements usually apply to both properties owned by corporate and institutional investors, as well as the ‘mom & pops’ who are dependent on rental income as some or all of their retirement income.<sup>52</sup> Here, even the large corporate landlords are often institutional investors comprised of pension funds of working people, or investment funds comprised of investments from individuals’ retirement plans and individual retirement accounts.<sup>53</sup> Landlords are not necessarily the rich property owners they are often presumed to be.

Conditions and regulations associated with COVID-19 have only exacerbated the burden on individual landlords. Avail<sup>54</sup> surveyed tenants and property owners and found that more than 45% changed a tenant’s payment schedule, and almost two-thirds discounted or deferred rent.<sup>55</sup> Interestingly, almost half of the respondents to the survey were small property owners, and more than a third were retired.<sup>56</sup>

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<sup>48</sup> Desilver, *supra* note 45.

<sup>49</sup> Broady et al., *supra* note 46; *Property Owners Continue to Struggle Amid Pandemic Environment*, *supra* note 47.

<sup>50</sup> Broady et al., *supra* note 46.

<sup>51</sup> Stern, *supra* note 3 at 147.

<sup>52</sup> Diana Olick, *Small Landlords Dip into Savings as Their Tenants Struggle to Pay Rent*, CNBC (Aug. 24, 2020), <https://www.cnbc.com/2020/08/24 /small-landlords-dip-into-savings-as-their-tenants-struggle-to-pay-rent.html>; Marin Scott, *Landlords and Renters Struggling to Make Ends Meet During COVID-19 Uncertainty*, AVAIL (Feb. 7, 2022), <https://www.avail.co/blog/landlords-and-renters-struggling-to-make-ends-meet -during-covid-19-uncertainty>.

<sup>53</sup> Heather Gillers & Dawn Lim, *For Pensions, Valuing Real Estate Is Tough. Covid-19 Brings New Hurdles*, WALL ST. J. (July 10, 2020), <https://www.wsj.com/articles/for-pensions-valuing-real-estate-is-tough-covid-19-brings-new-hurdles-11594379215>.

<sup>54</sup> Avail serves as an information source to tenants and landlords, offering rental services and a management app. See AVAIL, [www.avail.co](http://www.avail.co) (last visited June 7, 2022).

<sup>55</sup> Marin Scott, *Landlords and Renters Struggling to Make Ends Meet During COVID-19 Uncertainty*, AVAIL (Feb. 7, 2022), <https://www.avail.co/blog/landlords-and-renters-struggling-to-make-ends-meet -during-covid-19-uncertainty>.

<sup>56</sup> *Id.*

*D. The Staggering Effect of COVID-19 on Housing Stakeholders*

Federal, state, and local governments responded to COVID-19 in one or more of three ways: eviction restrictions or prohibitions, deferral of rent payments, and rent subsidies. Small property owners of residential real estate have suffered disproportionately from the shutdowns and economic fallout from COVID-19 as a result of delinquent rent payments and moratoriums on evictions. A survey conducted in August of 2020<sup>57</sup> on both landlords and tenants revealed unexpected landlord demographic information, as well as the devastating impact of COVID-19 and government shutdowns.<sup>58</sup> Of the 2,225 property owners answering the survey, more than 45% were sixty years or older, and a majority had a household income of between \$24,000 and \$150,000. Thirty-five percent of the property owners reported half or more of their annual income came from rental property revenues.<sup>59</sup> These property owners bore the brunt of rent freezes and eviction moratoriums.

Meanwhile, housing in the U.S. became more expensive for purchasers since the start of the pandemic. Home prices have risen dramatically as work-from-home arrangements and growing families increase demand for homes, even as mortgage interest rates are steadily rising. Median home prices increased 14.6% in the fourth quarter of 2021 from 2020.<sup>60</sup> The average thirty year fixed rate was 3.69%, which is the highest level since January 2020.<sup>61</sup> With high rates of inflation, mortgage rates are expected to continue to increase, pushing monthly payments even higher.<sup>62</sup> The increased costs and demand for homeownership are excluding many who would otherwise purchase, and who are now seeking out rental accommodations. According to Redfin,<sup>63</sup> average monthly rents in December 2021 increased more than 14% over a year earlier. In many major cities, rents increased

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<sup>57</sup> Avail is a company serving as an information resource to tenants and property owners. The company also offers rental services for both property owners and tenants, as well as a rental property management app to manage the tasks involved in renting residential real estate. See AVAIL, *supra* note 54.

<sup>58</sup> Abby Vesoulis, *How Eviction Moratoriums Are Hurting Small Landlords—and Why That's Bad for the Future of Affordable Housing*, TIME (Jun. 11, 2020), <https://time.com/5846383/coronavirus-small-landlords/>.

<sup>59</sup> Scott, *supra* note 55.

<sup>60</sup> Nicole Friedman, *U.S. Housing Affordability Worsens*, WALL ST. J. (Feb. 10, 2022), <https://www.wsj.com/articles/u-s-housing-affordability-worsens-11644507291>.

<sup>61</sup> *Id.*

<sup>62</sup> *Id.*

<sup>63</sup> Redfin.com is a full-service real estate brokerage company. See REDFIN, <https://www.redfin.com/why-redfin> (last visited June 11, 2022).

more than 30%.<sup>64</sup> While wages have also increased for some (but not all) jobs,<sup>65</sup> increases in the cost of both homeownership and rental residential real estate resulted in a decrease in housing affordability. All of these factors, combined with raging inflation in 2021 and even more in 2022, are increasing demand for more rent control regulations around the country.<sup>66</sup>

*i. Eviction Moratoria During COVID-19*

Congress, through the CARES Act, and the Center for Disease Control (“CDC”) imposed eviction moratoria in reaction to the government shutdowns.<sup>67</sup> With many people out of work, isolating, and distancing, the CDC notice stated, “(i)n the context of a pandemic, eviction moratoria—like quarantine, isolation, and social distancing—can be an effective public health measure to prevent the spread of the communicable disease.”<sup>68</sup> Consequently, by temporarily prohibiting

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<sup>64</sup> Julia Carpenter, *How Rent Hikes Make Buying a House Even Harder*, WALL ST. J. (Feb. 2, 2022), <https://www.wsj.com/articles/mortgage-rates-rent-prices-rise-what-should-home-buyers-do-11643809312>; Lily Katz & Tim Ellis, *Rental Market Tracker: Rents Rise 14% in December - Biggest Jump in Over Two Years*, REDFIN (May 26, 2022), <https://www.redfin.com/news/redfin-rental-report-december-2021/>.

<sup>65</sup> David Harrison, *Companies Plan Big Raises for Workers in 2022*, WALL ST. J. (Dec. 7, 2021), <https://www.wsj.com/articles/companies-plan-big-raises-for-workers-in-2022-11638889200>; Gabriel T. Rubin, *U.S. Wages, Benefits Rose at Two-Decade High as Inflation Picked Up*, WALL ST. J. (Jan. 28, 2022), <https://www.wsj.com/articles/us-employers-labor-costs-inflation-11643331612>; Lauren Weber, *In Hot Job Market, Salaries Start to swell for White-Collar Workers*, WALL ST. J. (Dec. 26, 2021), <https://www.wsj.com/articles/in-hot-job-market-salaries-start-to-swell-for-white-collar-workers-11640514607>.

<sup>66</sup> Will Parker, *Rent-Control Measures Are Back as Home Rents Reach New Highs*, WALL ST. J. (March 13, 2022), <https://www.wsj.com/articles/rent-control-measures-are-back-as-home-rents-reach-new-highs-11647180001>.

<sup>67</sup> Corona Virus Aid, Relief, and Economic Security Act, Pub. L. No. 116-136 (2020); Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, 85 Fed. Reg. 55292 (Sep. 4, 2020); The CDC’s Federal Eviction Moratorium, CONG. RSCH. SERV. (Aug. 31, 2021), <https://crsreports.congress.gov/product/pdf/IN/IN11673>; Mark Grywacheski, *Mark-to-Market: Rent prices expected to soar in 2022*, QUAD-CITY TIMES (Dec. 26, 2021), [https://qctimes.com/business/local/mark-to-market-rent-prices-expected-to-soar-in-2022/article\\_9215ab13-9cb5-5545-b596-305b4cde3481.html](https://qctimes.com/business/local/mark-to-market-rent-prices-expected-to-soar-in-2022/article_9215ab13-9cb5-5545-b596-305b4cde3481.html); Editorial Board, *Trump’s Housing Seizure*, WALL ST. J. (Sep. 3, 2020), <https://www.wsj.com/articles/trumps-housing-seizure-11599174672>.

<sup>68</sup> Temporary Halt in Residential Evictions to Prevent the Further Spread of COVID-19, *supra* note 67.

evictions of tenants who fail to pay, Congress and the CDC saddled landlords with the cost of facilitating this method of reducing the spread of COVID-19.

The eviction freezes imposed by state and local governments mirror the negative effect of rent control on small property owners as discussed throughout this article. Affected property owners are expected to subsidize housing costs for their tenants, but at the same time must continue to pay for all ownership costs. Small property owners also lose out on other advantages that are available to owners of other property types. Large real estate companies can benefit from more than \$100 billion in tax breaks available through the CARES Act, while small property owners are not eligible for those same tax advantages.<sup>69</sup> The Act removed caps on deducting net operating losses—a benefit more accessible to large businesses than to the smaller operators.<sup>70</sup> As a result, the eviction moratoria were worse for landlords subject to rent control because with rent control at least a discounted amount is collected. Although rent moratoria offer more time for tenants to pay rent (instead of complete rent forgiveness or required discounts), the reality of the situation is many tenants do not pay the delinquent rent due once the moratorium is lifted.<sup>71</sup> While governments have offered landlord assistance programs, the process requires many steps and is not as timely as monthly rental payments, and some also require the tenant to participate in the process.<sup>72</sup>

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<sup>69</sup> Vesoulis, *supra* note 58.

<sup>70</sup> *Id.*

<sup>71</sup> Robyn A. Friedman, *What You Can and Can't Do if Your Tenant Stops Paying Rent During Covid*, WALL ST. J. (Feb. 26, 2021), <https://www.wsj.com/articles/paying-rent-during-covid-landlords-11614201531>.

<sup>72</sup> *Emergency Rental Assistance Program*, U.S. DEP'T OF THE TREAS., <https://home.treasury.gov/policy-issues/coronavirus/assistance-for-state-local-and-tribal-governments/emergency-rental-assistance-program> (last visited March 18, 2022); *Help for landlords*, Consumer Financial Protection Bureau, CONSUMER FIN. PROT. BUREAU, <https://www.consumerfinance.gov/coronavirus/mortgage-and-housing-assistance/help-for-landlords/> (last visited March 18, 2022); *Rental Assistance in COVID-19 Relief Packages*, NAT'L ASS'N OF HOME BUILDERS, <https://www.nahb.org/advocacy/industry-issues/emergency-preparedness-and-response/coronavirus-preparedness/key-housing-provisions-in-covid-19-relief-package/rental-assistance-in-covid-19-relief-package> (last visited March 18, 2022); *Business Assistance for Landlords During COVID-19*, JUSTIA, <https://www.justia.com/covid-19/eviction-bans-and-mortgage-relief-during-covid-19/business-assistance-for-landlords/> (last visited March 18, 2022); David Zahniser, *Landlord sues L.A. for \$100 million, saying anti-eviction law caused 'astronomical' losses*, L.A. TIMES (Aug. 9, 2021), <https://www.latimes.com/california/story/2021-08-09/apartment-building-owner-geoffrey-palmer-sues-los-angeles-saying-anti-eviction-law-caused-astronomical-losses>.

After the CARES Act and CDC moratoria ended, dozens of states and cities have proposed and enacted local eviction moratoria.<sup>73</sup> Lawmakers proposed 195 eviction laws in 2021, which is 65% more than proposed in 2019.<sup>74</sup> A number of state and local governments are using taxpayer money to provide legal counsel at no charge to delinquent renters.<sup>75</sup> New York state legislators have proposed a law that would prohibit evictions without “good cause.”<sup>76</sup> This law, which extends regulation to more than one million unregulated units not covered by rent regulation, would also limit increases in rent.<sup>77</sup>

In essence, eviction moratoria can have the same effect on small property owners, yet moratoria have the potential to be more damaging to property owners than rent control because they reduce the ramifications of ceasing to pay rent completely. At least with rent controls, the tenant is paying below-market rents.

### III. ECONOMISTS DESPISE RENT CONTROL

*“Only bombing would be worse than rent control.”*<sup>78</sup>

*“Rent control has in certain Western countries constituted, maybe, the worst example of poor planning by governments lacking courage and vision.”*<sup>79</sup>

Gunner Myrdal, an architect of Sweden’s welfare state by Nobel Prize in economics with co-winner FA Hayek

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<sup>73</sup> Broady et al., *supra* note 46; Will Parker, *New Local Laws Aim to Stop Rising Evictions*, WALL ST. J. (Dec. 25, 2021), <https://www.wsj.com/articles/new-local-laws-aim-to-stop-rising-evictions-11640428202>.

<sup>74</sup> Parker, *supra* note 73.

<sup>75</sup> *Id.*

<sup>76</sup> Steven Wishnia, *Good-Cause Eviction Tops Tenants’ 2022 Agenda*, THE INDEPENDENT (Dec. 15, 2021), <https://independent.org/2021/12/good-cause-eviction-tops-tenants-2022-agenda/>.

<sup>77</sup> *Id.*

<sup>78</sup> Sam Bowman, *Only Bombing Would Be Worse than Rent Control*, ADAM SMITH INST. (Jan. 25, 2012), <https://www.adamsmith.org/blog/planning-transport/only-bombing-would-be-worse-than-rent-control>.

<sup>79</sup> Block, *supra* note 35.

### A. Introduction to the Economics of Rental Price Ceilings

Rent control is one example of a price-ceiling regulation. “The price ceiling is usually instituted via law and is typically applied to necessary goods like food, rent, and energy sources.”<sup>80</sup> Housing can be likened to other important consumer goods and services, with the property owner serving as the supplier and the tenant serving as the consumer. Yet with rent control, state and local governments that impose it expect the supplier to subsidize housing at below-market rates to the consumer.<sup>81</sup>

A diverse group of stakeholders are impacted by imposed price ceilings. A significant portion of residential rental real estate is owned by individuals. As previously discussed, almost half of rental units in the country are owned by individuals.<sup>82</sup> Almost a third of those individual property owners are retirees.<sup>83</sup>

### B. Negative Effects on Tenants in Non-Rent-Controlled Properties

Most economists do not favor rent control as a way to address the housing needs of low-income individuals. The Initiative on Global Markets at the University of Chicago Booth School of Business surveyed economists, asking whether “local ordinances that limit rent increases for some rental housing units, such as in New York and San Francisco, have had a positive impact over the past three decades on the amount and quality of broadly affordable rental housing in cities that have used them.” Only 2% answered ‘agree’ and none answered ‘strongly agree.’<sup>84</sup> Even more compelling is the fact that the expert confidence in that answer was 43% for the response ‘disagree’ and 52% for ‘strongly disagree,’

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<sup>80</sup> Zachary Sturman, *Where's the Consumer Harm? The BOTS Act: A Fruitless Boogeyman Hunt*, 22 VAND. J. ENT. & TECH. L. 951, 980 (2020) (citing Prateek Agarwal, *Price Ceiling*, INTELLIGENT ECONOMIST (Feb 3, 2020), <https://perma.cc/N88K-42AL>).

<sup>81</sup> Sturtevant, *supra* note 41.

<sup>82</sup> Robert Farrington, *What An 'Eviction Freeze' Means for Mom and Pop Landlords*, FORBES (Jul. 15, 2020), <https://www.forbes.com/sites/robertfarrington/2020/07/15/what-an-eviction-freeze-means-for-mom-and-pop-landlords/#40148e837061>; Olick, *supra* note 52; Vesoulis, *supra* note 58; Dake, *supra* note 28; *2015 American Housing Survey*, *supra* note 43; Teresa Wiltz, *As Covid-19 Tanks the Economy, Eviction Moratoriums Expire*, PEW (Aug. 6, 2020), <https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2020/08/06/as-covid-19-tanks-the-economy-eviction-moratoriums-expire>.

<sup>83</sup> Olick, *supra* note 52; Scott, *supra* note 55.

<sup>84</sup> *Rent Control*, THE INITIATIVE ON GLOB. MKTS. (Feb. 7, 2012), <https://www.igmchicago.org/surveys/rent-control/>.

while confidence in the response ‘agree’ was only one percent and zero percent for ‘strongly agree.’<sup>85</sup>

In 1979, San Francisco enacted rent control on all existing rental buildings with five or more apartments. Legislators exempted all new development, as well as smaller buildings from the rent controls. In 1994, a ballot initiative removed the exemption for small apartment buildings built before 1980. This rent control expansion served as a natural study of the expansion of rent control for economists.<sup>86</sup>

In the case of a rent-control law change in San Francisco in 1995, rent savings for controlled tenants were found to be equal to the extra rent costs to other renters.<sup>87</sup> In other words, the suppression of rent prices in rent-controlled properties was offset by the increase in rent expense over market rates at the equilibrium for non-controlled properties. This means the rent income taken from the owners of the rent-controlled properties is effectively transferred to owners of non-controlled properties with inflated rents. In essence, tenants in rent-controlled properties and landlords of non-controlled properties are the winners in these situations, while tenants of non-controlled properties and owners of rent-controlled properties are the direct losers. Despite this, no one is taking into account the wealth or income of the ‘winners’ or the ‘losers.’ The winners, in this case, could be the wealthy while the losers could be the working-class. These are highly inequitable income and property transfers as illustrated by the chart below.

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<sup>85</sup> *Id.*

<sup>86</sup> Rebecca Diamond et al., *The Effects of Rent Control Expansion on Tenants, Landlords, and Inequality: Evidence from San Francisco*, 109 AM. ECON. REV. 3365 (2019) [hereinafter Diamond et al., *Effects of Rent Control*]; Rebecca Diamond, *What Does Economic Evidence Tell Us About the Effects of Rent Control?* BROOKINGS (Oct. 18, 2018), <https://www.brookings.edu/research/what-does-economic-evidence-tell-us-about-the-effects-of-rent-control/> [hereinafter Diamond, *Economic Evidence*].

<sup>87</sup> Diamond et al., *Effects of Rent Control*, *supra* note 86; Diamond, *Economic Evidence*, *supra* note 86.

**TABLE: Transfer of Income and Wealth from Rent-Controlled Property Owners and Non-Controlled Renters to Rent-Controlled Tenants and Non-Controlled Property Owners (in a Market with Some Rent Control)**

	<b>Rent-Controlled Property</b> Rent prices suppressed below market prices by law	<b>Non-Controlled Property</b> (in a market with rent control) Rent prices rise above market rates due to lower supply
<b>Property Owner/Landlord</b>	<b>DAMAGED</b> By Rent Control: Receiving below-market rent income as dictated by law.	<b>BENEFITED</b> by Rent Control: Earning above-market rent income as a result of rent control decreasing housing supply.
<b>Tenant/Renter</b>	<b>BENEFITED</b> by rent control: Paying below-market rent expense as a result of rent control law.	<b>DAMAGED</b> By Rent Control: Must pay above-market rent because of reduced supply.

Other research shows additional destructive externalities. In some cases, rent control in an area reduced rents in uncontrolled properties as a result of deferred maintenance and a decline in rent-controlled properties. This disrepair can cause a decline in the value of the neighboring properties.<sup>88</sup> Again, this is a negative and inequitable externality and transfer of wealth.

<sup>88</sup> David Autor et. al., *Housing Market Spillovers: Evidence from the End of Rent Control in Cambridge, MA*, 122 J. POL. ECON. 661, 661–717 (2014); David P. Sims, *Out of Control: What Can We Learn from the End of Massachusetts Rent Control?* 61 J. URB. ECON. 129, 129–51 (2007).

*C. Basic Economics**i. Supply, Demand, and Price*

Price competition is the “central nervous system of the [free market] economy.”<sup>89</sup> Supply, demand, and price are a classic economic concept. Supply is the amount or number of goods producers will produce at a given price. Demand is the amount or number of goods buyers will purchase at a given price. A change in price will change the supply and the demand. The three factors find and settle at a natural equilibrium or balance.<sup>90</sup>

These three factors interact with each other in a dynamic fashion. When one of the three changes, one or both of the other two change in response. Regarding demand at a particular price, a certain number of people are willing to purchase an item. If that price is lowered, more people will find the price worth the value of the product, leading to an increase in demand. If the price increases, fewer people will agree that the value of the item is worth that higher price, and as a result, demand will fall.

Regarding supply, if the price of a good or service increases, more producers are willing to provide that good or service, leading to greater supply. On the other hand, if the price decreases, fewer producers find that price worth producing the goods or service, and supply declines.

These factors cannot be forced or controlled in isolation. Any attempt to change or control one of these factors results in a change in one or both of the others.<sup>91</sup> Any of the three factors that the government attempts to control will cause problems in other ways and may serve to exacerbate the original issue further.

*ii. Price Controls*

Price controls occur when the government sets restrictions regarding how much a seller can charge a buyer for a good or service, directly impacting supply and demand. The freeze on prices and wages in the 1970s is a classic example of government price controls.<sup>92</sup> A current example is rent control.

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<sup>89</sup> U.S. v. Socony-Vacuum Oil Co. 310 U.S. 150, 226, n. 59 (1940).

<sup>90</sup> SUPPLY AND DEMAND, COLUM. ELEC. ENCYC. (6th ed. 2020).

<sup>91</sup> *Supply and Demand, Markets and Prices*, LIBR. ECON. & LIBERTY, <https://www.econlib.org/library/Topics/College/supplyanddemand.html> (last visited June 7, 2022).

<sup>92</sup> See Robert P. Murphy, *Removing the 1970s Crude Oil Price Controls: Lessons for Free-Market Reform*, 33 J. PRIV. ENTER. 63, 63–78 (2018).

One consumer product greatly impacted by the 1970s price freeze was gasoline.<sup>93</sup> Because price controls interrupted the natural supply-demand-price dynamic, a host of negative, presumably unintended consequences erupted. Pushing prices below market value caused supplies to wither as suppliers had no incentive to produce gas below cost. This led to long lines at gas stations and wasting valuable consumer time. Consumers hoarded gas when it was available, leading to greater pressure on supplies. Black market sales and rationing proliferated. All of these negative consequences were a result of the price controls on gasoline.<sup>94</sup> Allowing the markets to reach equilibrium would have saved consumers from these negative consequences, arguably costing more than the hiked up prices. Rent control follows this same pattern.<sup>95</sup>

Price controls might work on a very short-term basis, but beyond that, they cause problems as unintended consequences emerge, as observed in our gas example. As evidenced in both the 1970s and during World War II—and now with rent control—ignoring market forces and equilibrium has led to inflation, shortages, rationing, black markets, and quality problems.<sup>96</sup>

Rent control is an example of government-mandated price control. While some governmental bodies impose price controls on rental properties, jurisdictions in the U.S. do not impose price controls on the selling price of residential real estate.<sup>97</sup> The question is why some state and local governments single out resident property owners by imposing a price ceiling on residential rent prices, but they do not attempt to control the prices of the sale of residential real estate. Moreover, those governments do not institute a price ceiling on either the rent or sale of commercial properties.

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<sup>93</sup> Murphy, *supra* note 92; Hugh Rockoff, *Price Controls*, LIBR. ECON. & LIBERTY, <https://www.econlib.org/library/Enc/PriceControls.html> (last visited June. 8, 2022).

<sup>94</sup> Murphy, *supra* note 92; Rockoff, *supra* note 93.

<sup>95</sup> Diamond et al., *Effects of Rent Control*, *supra* note 86; Edward L. Glaeser & Erzo F. P. Luttmer, *The Misallocation of Housing Under Rent Control*, 93 AM. ECON. REV. 1027–1046 (2003); Sims, *supra* note 88.

<sup>96</sup> Paul Evans, *The Effects of General Price Controls in the United States During World War II*, 90 J. POL. ECON. 944, 944–966 (1982); Stephanie Laguerodie & Francisco Vergara, *The Theory of Price Controls: John Kenneth Galbraith's Contribution*, 20 REV. POL. ECON. 569, 569–593 (2008); Rockoff, *supra* note 93.

<sup>97</sup> E.M. Kamal et al., *Housing Price Control: is it a way forward?* 2 SUSTAINABLE DEV. 1225, 1225–1235 (2015) (some other countries have instituted or attempted to institute regulations to impact or control pricing).

iii. Supply, Demand, and Price of Rent Control

Rent control exerts a cap on pricing in the residential rental real estate market. Any manipulation of pricing in that market affects the supply and demand of rental units. In the case of rent control, suppression of the rent pricing leads to greater demand as more people find the price worth paying for the value of the rent as it is pushed below market equilibrium rates. Conversely, as prices are forced lower by rent control rules, supply will diminish as investors find more attractive returns on other investments. Additionally, property owners will not properly maintain and improve the rental units they own because those capital investments will not generate any return. New construction would also be stifled because of the below-market revenues.<sup>98</sup>

Because pricing is affected by both supply and demand, this decrease in supply and the increase in demand are two factors that naturally lead to an increase in pricing. If pricing is not allowed to increase for the rent-controlled properties in response to the increase in demand and the decrease in supply, the demands will increase further and the supply will decrease more. Yet rent control does not only affect rent-controlled properties. Prices for non-rent-controlled properties will be affected by increases in the price above the market equilibrium level as a result of the increases in demand and the decreases in supply. Properties fall into disrepair, affecting many property values and the quality of life in the area.<sup>99</sup>

Ultimately, most of the affordable housing issue is a supply problem, rather than an affordability issue. Allow more supply and many affordability problems could disappear.

iv. Benefits for Tenants in Rent-Controlled Properties

It goes without saying, tenants in rent-controlled properties are benefited from the low, below-market rent prices. That is the intent of rent control laws. An additional benefit touted by advocates is stability for the tenants and the neighborhood.<sup>100</sup> One goal of rent control is to protect residents from being priced out of their neighborhoods due to gentrification, which is “the economic and

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<sup>98</sup> Block, *supra* note 35; Diamond et al., *Effects of Rent Control*, *supra* note 86 at 1, 2, 11, 30; Rajasekaran et al., *supra* note 35.

<sup>99</sup> Block, *supra* note 35; Diamond et al., *Effects of Rent Control*, *supra* note 86 at 1, 2, 11, 30; Rajasekaran et al., *supra* note 35.

<sup>100</sup> Diamond et al., *Effects of Rent Control*, *supra* note 86; Glaeser et. al., *supra* note 95; Sims, *supra* note 88; Rajasekaran et al., *supra* note 35.

demographic transformation of formerly marginalized neighborhoods.”<sup>101</sup> In Santa Monica, California, where the median rent for an average one-bedroom is \$2,395, 25% of rent-controlled units are still occupied by tenants who moved in before 1999.<sup>102</sup> This presumes that the residents’ incomes have not increased in proportion to the rising cost of living and housing costs. However, many wealthy residents continue to occupy rent-controlled units at the cost of the property owner, whose own expenses, taxes, maintenance, and other costs continue to rise.<sup>103</sup> Rent-control tenants are less likely to move. They have the choice whether to stay in the community or leave. While the tenant has choice in the matter, the property owner does not.

#### *D. Problems with Rent Control*

Rent control protects those lucky enough to inhabit a controlled unit, but not necessarily those in need. At the same time, the cost is borne by the individual property owners. Other than reducing the income of some property owners, rent control can limit appreciation for all homeowners in the area when property owners cannot maintain and improve the housing because of the low or negative earnings on any repairs or investment. Additionally, rent control limits the supply of rental property and the development of new rental units through conversion to condominiums or the threat of rent control on new construction at some time in the future.<sup>104</sup>

##### *i. Negative Effects on Tenants in Rent-Controlled Properties*

A negative side effect of rent control is a lack of mobility for tenants. Rent control becomes a disincentive to move. Tenants become ‘trapped’ in a location or in inappropriate or ‘mismatched’ (too large or too small) housing because the current rent is below market rates, while rent control causes the supply of housing units to decline and the prices of other housing options to be inflated by rent

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<sup>101</sup> Ayobami Laniyonu, *Assessing the Impact of Gentrification on Eviction: A Spatial Modeling Approach*, 54 HARV. C.R.-C.L. L. REV. 741, 755 (2019).

<sup>102</sup> *Rent Control*, CITY OF SANTA MONICA, <https://www.smgov.net/rentcontrol/> (last visited June 8, 2022).

<sup>103</sup> Josh Barbanel, *Wealthy, Older Tenants in Manhattan Get Biggest Boost from Rent Regulations*, WALL ST. J. (Jun. 12, 2019), <https://www.wsj.com/articles/wealthy-older-tenants-in-manhattan-get-biggest-boost-from-rent-regulations-11560344400>.

<sup>104</sup> Block, *supra* note 35; Diamond et al., *Effects of Rent Control*, *supra* note 86 at 1, 2, 4, 11, 30; Rajasekaran et al., *supra* note 35.

control. One study found that rent control increased the probability that a renter would stay at the same place by almost 20%.<sup>105</sup>

Under rent control, tenants are more likely to continue living in a housing unit that is inappropriate for their current needs because rent payments are very low. For example, a widow may be living alone in a large three-bedroom apartment in which she raised several children who are now grown. She has no need for all of that space or to be near a good school, but her rent under rent control is much less expensive than smaller and more appropriate options. In another scenario, a couple with two children may be living in a small apartment one of the adults rented as a single person. But the rent is low for that too-small unit, and larger, more appropriate units for families are in use by people, like the widow above, who no longer need them. In both situations, staying in place is a poor use of valuable housing resources. This is a loss for the renters, the property owners, and society in general.

Another consequence of the lack of mobility is it is a disincentive to change geographic locations. Tenants may forgo a job offer or other opportunities because their low rent expense is simply too good and secure to leave for better opportunities.

ii. Negative Effects on Tenants in Non-Rent-Controlled Properties

As noted earlier, rent prices of non-controlled properties are inflated because of rent control, resulting in higher housing prices for renters in non-controlled properties, while the owners of those properties profit. Note again, these tenants in the non-controlled properties are from all economic spectrums, some in need of affordable housing.

iii. Effects on Property Owners' & Developers' Actions

Because rent control can limit some or all of the profit from rental real estate, many property owners choose not to maintain or improve the property, leading to declines in the value of the investment.<sup>106</sup> While some rent control laws offer owners the opportunity to make capital improvements and increase rent, the allowable rent increase may not provide sufficient economic impetus to justify the expense and additional carrying costs related to the improvement. One study found that newly decontrolled properties' market values increased by 45%.<sup>107</sup>

<sup>105</sup> Diamond et al., *Effects of Rent Control*, *supra* note 86 at 1, 2, 11, 30.

<sup>106</sup> Block, *supra* note 35; Rajasekaran et al., *supra* note 35; Sims, *supra* note 88.

<sup>107</sup> Autor et. al., *supra* note 88 at 7.

Investment in new rental real estate construction declines as a result of rent control because the return on investment is artificially lowered below-market prices, making other investments more attractive for that capital. While new construction is often exempt from rent control, just the threat of future rent control regulation could have a chilling effect on investment and building because there is no guarantee that the laws will not change.

Finally, rent control keeps rents artificially low, encouraging owners to sell new units and to convert existing rentals to condominiums instead of continuing as a rental, thereby reducing the supply of rental housing. One study found that property owners reduced the rental housing supply by 15% by conversions to condominiums or by demolishing older buildings in response to the imposition of rent control.<sup>108</sup> These actions resulted in a 5.1% city-wide increase in rent prices,<sup>109</sup> and a 25% reduction in the number of renters living in rent-controlled properties.<sup>110</sup> Additionally, property owners were almost 10% more likely to convert rental property to condominiums under rent control, which resulted in a substantial reduction to the rental housing supply.<sup>111</sup>

iv. Rent Control Protects Those in the Units, Not Those in Need

Studies have found that rent control does not necessarily provide benefits to lower-income residents and families.<sup>112</sup> Census Bureau data shows affluent renters in Manhattan enjoyed much greater discounts on rent than those in working-class areas. Rent-control tenants in the top 25% of income paid about \$1,650 in rent for a property with a market rent of \$2,700, for a discount of 39%. Renters earning incomes in the bottom 25% of income in Manhattan benefited from only a 15% discount off market prices.<sup>113</sup>

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<sup>108</sup> Diamond et al., *Effects of Rent Control*, *supra* note 86 at 3368.

<sup>109</sup> *Id.* at 4, 29.

<sup>110</sup> *Id.* at 3368.

<sup>111</sup> *Id.* at 3389.

<sup>112</sup> See MANUEL PASTOR ET AL., USC, RENT MATTERS: WHAT ARE THE IMPACTS OF RENT STABILIZATION MEASURES? (2018); Sturtevant, *supra* note 41; Stern, *supra* note 3 at 142–143.

<sup>113</sup> Barbanel, *supra* note 103.

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#### IV. ALTERNATIVES TO RENT CONTROL

*“So, in the case of gentrification and housing prices, my solutions are pretty simple. There I just think you got to just build more stuff.”<sup>114</sup>*

State and local government officials and housing advocates claim the purpose of rent control is to help people in need obtain basic housing.<sup>115</sup> As this research shows, implementation of rent control causes more problems than it solves; it harms more people than it helps. Other methods exist to address this goal without causing the negative externalities and damage attendant to rent control. Notably, these options are not mutually exclusive; one or more could be used in combination to replace rent control and they can be specially tailored to address the needs and strengths of a particular community.

##### *A. Impact of the Repeal of Rent Control*

Some parties may be concerned about what could happen after rent control is repealed. Certainly, the repeal of rent control does not have to happen without other solutions ready to replace it. The solutions that follow in this section are excellent alternatives that address the issues without the negative outcomes that result from rent control. Additionally, the results of the elimination of rent control are not necessarily negative or widespread. A natural study of the removal of rent control presented itself when the state of Massachusetts eliminated rent controls in 1995. The city of Cambridge had imposed rent control regulations in 1970 on all rental units built before 1969, but the state-wide repeal of rent control in 1995 ended those regulations in Cambridge.<sup>116</sup> At the time of the repeal, over one-third of the residential units in Cambridge were rent-controlled.<sup>117</sup>

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<sup>114</sup> Edward Glaeser, Professor of Economics and Chairman of the Department of Economics at Harvard University, author of *Survival of the City*, expert on urban economics, stated on the *People I (Mostly) Admire* podcast. *People I (Mostly) Admire, Edward Glaeser Explains Why Some Cities Thrive While Others Fade Away*, FREAKONOMICS RADIO (Sep. 10, 2021), <https://freakonomics.com/podcast/edward-glaeser-explains-why-some-cities-thrive-while-others-fade-away/>.

<sup>115</sup> Block, *supra* note 35; Rajasekaran et al., *supra* note 35; *Reassessing Rent Control: Its Economic Impact in a Gentrifying Housing Market*, *supra* note 35; Stern, *supra* note 3 at 142–143; Diamond et al., *Effects of Rent Control*, *supra* note 86; Glaeser et al., *supra* note 95; Sims, *supra* note 88; Rajasekaran et al., *supra* note 35.

<sup>116</sup> Autor, et. al., *supra* note 88; Diamond, *Economic Evidence*, *supra* note 86.

<sup>117</sup> Autor, et. al., *supra* note 88.

To help residents with the transition, the city established an assistance program for rent-controlled tenants based on income level, age, or disability. Only 9.4% of the rent-controlled tenants established “protected status,” leading some to conclude that rent control in Cambridge was an entitlement for middle-income and upper-income renters.<sup>118</sup> The city also doubled the funding for a program to increase housing for low-income and moderate-income residents. The program added 50–100 units a year with the previous budget of \$2 million. That number increased with the additional funding. As 1995 progressed, the city councilors moved toward increasing funding for housing drastically. By the fall of 1996, political noise quieted as people seemed to accept the repeal of rent control.<sup>119</sup>

Meanwhile, decontrolled property values increased up to 45%, which resulted in more property taxes. Neighboring non-controlled properties also increased in value, especially those in areas with more rent-controlled properties. After the repeal, building permits more than doubled for several years.<sup>120</sup>

*i. Market Rates and Mobility*

The first alternative is to allow market forces to reach an equilibrium when supply increases to demand and the corresponding rise in prices. As supply rises to fulfill demand, prices then drop.

The benefit of this option is of no cost to taxpayers. Additionally, allowing market forces to reach an equilibrium eliminates the negative impact rent control has on the selected property owners who happen to own rent-controlled units and who experience reduced revenues. It also provides relief to neighboring tenants in non-controlled properties who are otherwise experiencing higher rents.

*ii. Subsidies or Tax Credits from the State or Local Government (Instead of Requiring Individual Property Owners to Subsidize the Tenant's Rent Expense)*

A second alternative turns the control and cost over to the taxpayers. If state and local governments want to mandate housing prices, they can create a Section 8-type program and pay a portion of the market rent expense directly to the

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<sup>118</sup> Robert P. Moncreiff, *The Repeal of Rent Control in Cambridge*, 12 J. PUB. POL., 117, 139 (1996).

<sup>119</sup> *Id.* at 140.

<sup>120</sup> Autor et. al., *supra* note 88; Diamond, *Economic Evidence*, *supra* note 86.

landlords.<sup>121</sup> In this way, landlords are compensated fairly, can pay taxes and insurance expenses, and have incentives to maintain the properties, while individuals with legitimate needs receive assistance to pay for one appropriately-sized residence only while in need and only for the amount of time they need that particular residence. When they no longer need that particular residence, they can move to another, more appropriate residence, and the property can be used by others who need it.

Implementation of government subsidies solves many of the problems with rent control. Namely, it eliminates restrictions on tenant mobility and inefficient mismatched use of housing resources, it is needs-based, income-tested, and wealth-tested to provide renters with only one residence, and it eliminates disincentives for investors to invest in rental housing.

State and local government tax credits and subsidies are costly to taxpayers, and only benefit a limited number of people. This option eliminates the issues associated with putting the funding burdens on property owners who are burdened with rent control, but it also serves to limit the assistance to only those who are in need. Because rent control is not needs-based or needs-tested, renters who could pay market rates benefit, while rents in those markets are inflated for those with lower income. Governmental subsidies or tax credits could be directly related to true financial need, while rent control does not.

### *iii. Government-Owned Rental Housing*

Somewhat similar to government subsidies, government-owned rental housing is when the government purchases or builds the properties and becomes the landlord. This option gives governments control of housing prices and conditions. The taxpayers, rather than the private property owners, take on the risk and losses. This vehicle is already provided for low-income people and could be expanded to higher-income people, as the voters and taxpayers in the area desire.

Many large institutional investors and corporations are building or buying homes to rent, competing with individual homebuyers. This practice accelerated during the Covid pandemic.<sup>122</sup> State and local governments can use this same strategy to provide affordable housing for residents.

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<sup>121</sup> Justin Graham, *Playing "Fair" with Urban Redevelopment: A Defense of Gentrification Under the Fair Housing Act's Disparate Impact Test*, 45 ARIZ. ST. L.J. 1719, 1750 (2013).

<sup>122</sup> Ryan Dezember, *If You Sell a House These Days, the Buyer Might Be a Pension Fund*, WALL ST. J. (Apr. 4, 2021), <https://www.wsj.com/articles/if-you-sell-a-house-these-days-the-buyer-might-be-a-pension-fund-11617544801>; Noah Buhayer, Patrick Clark &

While this option can remedy the wrongs rent control perpetrates, it is costly to taxpayers and benefits a limited number of people. Additionally, government-owned housing is renowned for being problematic.<sup>123</sup>

iv. Government-Owned Rent-to-Own Housing

A solution similar to government-owned housing includes programs in which state or local governments purchase housing, similar to large investors and corporations, and offer rent-to-own options for those in need of affordable housing.

At the end of 2021, a governmental agency in Cincinnati, Ohio outbid investment companies to purchase 194 homes for \$14.5 million. The governmental agency plans to continue to rent the homes while upgrading them, with the intent to sell the homes to low and middle-income tenants at some time in the future. Because part of the project will be funded by municipal bonds, the agency was able to pay more than the prices offered by for-profit companies. Additionally, the agency is not seeking to earn a profit, as investors would require.<sup>124</sup>

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Jordyn Holman, *Wall Street Is Using Tech Firms Like Zillow to Eat Up Starter Homes*, BLOOMBERG (Jan. 7, 2022), <https://www.bloomberg.com/news/features/2022-01-07/buying-starter-homes-gets-harder-as-wall-street-uses-zillow-to-buy-thousands>; Dominick Reuter, *Real Estate Developers are Building More New Single-Family Rental Homes After Years of Investors Buying Up Houses to Rent*; BUSINESS INSIDER (June 8, 2021), <https://www.businessinsider.com/developers-are-building-more-new-single-family-rental-home-communities-2021-6>.

<sup>123</sup> Howard Husock, *Public Housing Becomes the Latest Progressive Fantasy*, ATLANTIC (Nov. 25, 2019), <https://www.theatlantic.com/ideas/archive/2019/11/public-housing-fundamentally-flawed/602515/>; Howard Husock, *How Public Housing Harms Cities*, CITY J., (2003), <https://www.city-journal.org/html/how-public-housing-harms-cities-12410.html>; Molly Parker, *"They Painted Over Problems": How Residents of One Affordable Housing Complex Went From Hope to Despair*, PROPUBLICA, (Dec. 18, 2019), <https://www.propublica.org/article/they-painted-over-problems-how-residents-of-one-affordable-housing-complex-went-from-hope-to-despair>.

<sup>124</sup> Maddie McGarvey, *Cincinnati Agency Buys Nearly 200 Rental Homes, Thwarting Private Investors*, WALL ST. J. (Jan. 8, 2022), <https://www.wsj.com/articles/cincinnati-agency-buys-nearly-200-rental-homes-thwarting-private-investors-11642510803>.

v. Reduce Barriers to Development

Reducing barriers to development—excessive regulations, restrictive zoning, taxes, and fees related to the development and building of housing<sup>125</sup>—will lead to increased development and consequently a greater supply of housing units. One study estimated that over 30% of the cost of developing multifamily residences is attributable to regulation.<sup>126</sup> The cost of new developments rose by over 50% between 1990 and 2002, while 10–20% of a moderately priced home is due to unnecessary regulation and fees.<sup>127</sup> This additional cost burden is amplified with lower-priced housing, consequently, this regulation encourages builders and developers to focus on higher-priced housing to cover those costs.

With an appropriate market return on investment, investors and developers will act to build additional units to increase supply, which will result in more affordable prices.

Investment in rental property increases when the returns are market-level considering the risk involved. There are two ways to increase the attractiveness of investment in rental properties compared to other investments—increase revenues and decrease costs. Any of these barriers to development increase the cost of investment, just as rent control decreases revenue. Each of these factors works to chase dollars away from housing development, which decreases the potential supply of units. Reducing these barriers will decrease cost and increase supply—leading to a drop in pricing.

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<sup>125</sup> *Breaking Down Regulatory Barriers to Housing*, U.S. DEP'T OF HOUS. AND URB. DEV. (Mar. 20, 2017), <https://www.huduser.gov/portal/pdredge/pdr-edge-featd-article-032017.htm>; *Exploring the Current State of Knowledge on the Impact of Regulations on Housing Supply*, U.S. DEP'T OF HOUS. AND URB. DEV. (Spring 2018), <https://www.huduser.gov/portal/periodicals/em/spring18/highlight2.html>; *Housing Development Toolkit*, THE WHITE HOUSE (Sep. 2016), [https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/images/Housing\\_Development\\_Toolkit%20f.2.pdf](https://obamawhitehouse.archives.gov/sites/whitehouse.gov/files/images/Housing_Development_Toolkit%20f.2.pdf); Michael Stegman, *Eliminating Exclusionary Land Use Regulations Should be the Civil Rights Issue of Our Time*, JOINT CTR. FOR HOUS. STUD. OF HARVARD UNIV. (Aug. 2019), [https://www.jchs.harvard.edu/sites/default/files/harvard\\_jchs\\_exclusionary\\_zoning\\_civil\\_rights\\_stegman\\_2019\\_0.pdf](https://www.jchs.harvard.edu/sites/default/files/harvard_jchs_exclusionary_zoning_civil_rights_stegman_2019_0.pdf).

<sup>126</sup> *Regulation: Over 30 Percent of the Cost of Multifamily Development*, NAT'L MULTIFAMILY HOUS. COUNCIL (June 2018), <https://www.nmhc.org/contentassets/60365effa073432a8a168619e0f30895/nmhc-nahb-cost-of-regulations.pdf>.

<sup>127</sup> Michael H. Schill, *Regulations and Housing Development: What We Know*, 8 CITYSCAPE 5, 13 (2005).

The threat of rent control is also a steep and serious barrier to development.<sup>128</sup> As seen with the impact in Cambridge, Massachusetts after the state-wide repeal of rent control in 1995, the prohibition of rent control increased housing.<sup>129</sup> Just by prohibiting rent control, and assuring investors that rent control will not return, state and local governments could cause an increase in supply because investors are relieved of a threat<sup>130</sup> to appropriate returns on their investments.<sup>131</sup> These reductions in barriers to development could lead to the claimed purpose of rent control which has always been to lower rent prices.

In addition to the extra costs associated with regulation burdens such as zoning restricts types and quantities of housing,<sup>132</sup> much of this NIMBY (“not in my backyard”) attitude is enforced with restrictive zoning.<sup>133</sup> One example of a state or local government’s recognition of and response to this barrier is the law California passed in late 2021. The law allows, with some restrictions, two housing units on parcels of land zoned for single-dwelling units, splitting of an existing

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<sup>128</sup> Parker, *supra* note 66.

<sup>129</sup> Autor et. al., *supra* note 88; Diamond, *Economic Evidence*, *supra* note 86.

<sup>130</sup> *Id.*

<sup>131</sup> Block *supra* note 35; Diamond et al., *Effects of Rent Control*, *supra* note 86 at 1, 2, 11, 30; Rajasekaran et al., *supra* note 35.

<sup>132</sup> Edward L. Glaeser & Joseph Gyourko, *The Impact of Building Restrictions on Housing Affordability*, FRBNY ECON. POL’Y REV. 21 (June 2003); GERRIT KNAAP, STUART MECK, TERRY MOORE & ROBERT PARKER, AM. PLANNING ASS’N, ZONING AS A BARRIER TO MULTIFAMILY HOUSING DEVELOPMENT (2007); Jenny Schuetz, *Is Zoning a Useful Tool or a Regulatory Barrier?*, BROOKINGS (Oct. 31, 2019), <https://www.brookings.edu/research/is-zoning-a-useful-tool-or-a-regulatory-barrier/>; Richard V. Reeves & Dimitrios Halikias, *How Land Use Regulations are Zoning Out Low-Income Families*, BROOKINGS (Aug. 16, 2016), <https://www.brookings.edu/blog/social-mobility-memos/2016/08/16/zoning-as-opportunity-hoarding/>; *Zoning Changes to Allow for Higher Residential Density*, LOC. HOUS. SOLUTIONS, <https://localhousingsolutions.org/housing-policy-library/zoning-changes-to-allow-for-higher-residential-density/> (last visited June 7, 2022).

<sup>133</sup> Miriam Axel-Lute, *What is NIMBYism and How Do Affordable Housing Developers Respond to It?*, SHELTERFORCE (Nov. 17, 2021), <https://shelterforce.org/2021/11/17/what-is-nimbyism-and-how-do-affordable-housing-developers-respond-to-it/>; Jamie Ross, *Avoiding and Overcoming Neighborhood Opposition to Affordable Rental Housing*, NAT’L LOW INCOME HOUSING COALITION, at 2–41, 2–46 [https://nlihc.org/sites/default/files/AG-2021/02-10\\_Avoiding-Overcoming-Opposition.pdf](https://nlihc.org/sites/default/files/AG-2021/02-10_Avoiding-Overcoming-Opposition.pdf) (last visited Jan. 3, 2023); Russell Brown, *NIMBY Effects on Low-Income Housing Policy: A Case of Two Cities* (2012) (M.A. thesis, Duquesne University) (on file with Duquesne University).

home into two units, and the subdivision of one lot into two separate plots of land. The limit is up to four units on what is currently a single-family unit.<sup>134</sup>

The benefit of reducing barriers to development is that taxpayers do not bear the costs and additional housing is made available for residents at all income levels.

### *B. Recent Federal Proposals Under Consideration*

The federal government has begun to address the housing shortage and affordability issues by taking small steps in a few of the ways which have been recommended above. The changes include promoting greater land use with funding, possible testing of financing for ‘tiny houses,’ consideration of buying loans for multifamily homes before construction, and consideration of possible moves to increase manufactured homes.<sup>135</sup>

## CONCLUSION

Rent control is frequently the result of a myopic focus on problems faced by residential tenants. However, a broader understanding of how rent control impacts all stakeholders in the business of housing—all parties within the web of interests associated with an impacted property—results in lasting solutions to unaffordable housing. Rent control places a disproportionate burden on property owners, who are often ‘mom and pops’ and not the large, wealthy institutional investors frequently envisioned. The research concludes that rent controls and eviction moratoriums make an investment in rental properties, especially low-priced ones, less attractive and profitable. Capping prices causes the supply of a good or service to drop while also causing demand to grow. However, with fewer investors willing to add additional units, the issue of supply remains unaddressed. Housing investment dollars are far more likely to land in areas of the country without rent control, and existing units fall into disrepair as limits on rent revenues discourage maintenance and improvements.

Rent control cements mismatched housing, resulting in poor use of housing resources and lack of tenant mobility experienced when people stay in the below-

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<sup>134</sup> Cal. S. SB-9 2021 S. (Cal. 2021); *Senate Bill 9 is the Product of a Multi-Year Effort to Develop Solutions to Address California’s Housing Crisis*, SB 9, <https://focus.senate.ca.gov/sb9> (last visited June 7, 2022).

<sup>135</sup> Andrew Ackerman & Nicole Friedman, *Biden Administration Targets Housing Supply Shortage with Affordable Housing Plan*, WALL ST. J. (May 16, 2022), <https://www.wsj.com/articles/biden-administration-targets-housing-supply-shortage-11652691600>.

market, controlled housing even as their lives and needs change. Available, quality affordable housing is necessary for society. Alternative solutions are more effective, without the problems and failures of rent control and eviction moratoriums. Consequently, governments and housing advocates should venture beyond rent control and consider other options including subsidies or tax credits, government-owned rental or rent-to-own housing, and reduced barriers to development to craft long term multi-participant solutions to unaffordable housing.