No. 22-1130

IN THE
Supreme Court of the United States

74 PINEHURST LLC, et al.,
Petitioners,
v.
State of NEW YORK, et al.,
Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

BRIEF IN OPPOSITION FOR STATE RESPONDENTS

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Whether the court of appeals properly rejected petitioners' facial and as-applied physical takings challenges to New York's Rent Stabilization Law given the law's numerous constitutional applications and petitioners' failure to allege any government-forced occupation of their property.

2. Whether the court of appeals properly rejected petitioners' regulatory takings challenges to the Rent Stabilization Law based on a case-specific application of *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978).

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INTRODUCTION

For the past half century, New York State and New York City have administered the Rent Stabilization Law (RSL), which controls the pace of rent increases for regulated apartments and governs the eviction of tenants in regulated units.[1] The RSL is a critical tool to combat the harms caused by rent profiteering in a tight housing market including homelessness and economic instability. At the same time, the law ensures that property owners can earn a reasonable return.

The state Legislature has repeatedly amended the RSL in response to changing economic and local conditions. In the 1990s, for example, the Legislature adopted many owner-friendly provisions, including adding new grounds for rent increases and permitting deregulation of certain units upon vacancies. By the 2010s, however, it became clear that these provisions were pervasively abused in ways that were disrupting the housing market. Accordingly, in 2019, the Legislature enacted the Housing Stability and Tenant Protection Act (HSTPA), ch. 36, 2019 McKinney's N.Y. Laws 154, to strengthen the RSL's tenant protections and curb property owners' attempts to rapidly raise rents, harass tenants, force tenants out of regulated units, and remove regulated units from the RSL's coverage.

Several months later, petitioners (six property owners and one building manager) initiated this action seeking to invalidate the RSL in its entirety as purportedly violative of the Takings Clause of the Fifth

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[1] This brief is submitted on behalf of respondents State of New York, Division of Housing and Community Renewal (DHCR) (the state agency that administers the RSL), and DHCR Commissioner RuthAnne Visnauskas.

Amendment to the United States Constitution. The U.S. District Court for the Eastern District of New York (Komitee, J.) dismissed the complaint in relevant part for failure to state a claim (Pet. App. 21a-54a), and the Second Circuit affirmed (Pet. App. 1a-20a). Petitioners now seek certiorari. The petition should be denied.

First, petitioners ask this Court to review whether the RSL constitutes a physical taking both facially and as applied to their property. This case is a poor vehicle to consider that question for several reasons. The RSL permits changes in use of property in numerous circumstances and allows for evictions based on nonpayment, illegal activity, and other misconduct. The existence of these exits from the rental market alone defeats petitioners' facial physical takings claim. More fundamentally, petitioners' complaints about the RSL are purely hypothetical. No petitioner alleges that it now wishes to exit the rental market and has been prohibited from doing so by the RSL, and no petitioner alleges that it is being forced to keep a tenant that it wishes to evict for any reason other than the desire to charge a higher rent. Petitioners also do not explain how invalidating the entire RSL would be necessary to remedy the purported constitutional infirmities they identify.

In any event, the court of appeals correctly applied settled law to hold that the RSL is not a physical taking, and there is no split in authority requiring this Court's intervention. This Court has long recognized that when property owners voluntarily rent out their property, regulations governing the landlord-tenant relationship are not physical takings. *See Yee v. City of Escondido*, 503 U.S. 519, 528-29 (1992). The RSL neither conscripts property owners into the rental market nor prevents them from exiting. Instead, the RSL permissibly regulates property use and gives owners various options to

change the use of their property and substantial rights to control who occupies it. The decision below is consistent with *Cedar Point Nursery v. Hassid*, which expressly distinguished between the regulation of property that owners voluntarily hold open to third parties and government-forced intrusions on private land. 141 S. Ct. 2063, 2076-77 (2021). And the Eighth Circuit decision that petitioners cite as conflicting with the decision below involved an emergency eviction moratorium that is materially distinguishable from the RSL.

Second, petitioners ask this Court to review whether the RSL effects a regulatory taking both facially and as applied to their property. At the outset, regulatory takings challenges are generally unsusceptible to facial review under the fact-intensive *Penn Central* inquiry. In addition, the court of appeals correctly held that petitioners' as-applied regulatory takings claims are unripe because they did not seek statutory exemptions from limits on rent increases.

Moreover, the court of appeals correctly applied *Penn Central* to dismiss petitioners' claims. Petitioners' attempt to manufacture a circuit split merely identifies cases where courts have reached different results based on different facts. Petitioners alternatively suggest that this Court should overrule *Penn Central*, offering only the vaguest of substitutes for that seminal decision. There is no basis for that drastic course.

STATEMENT

A. Legal Background

1. The history of rent regulation in New York State dates to at least World War II, when labor shortages and other wartime forces precipitated an acute housing crisis.[2] In 1946, the Legislature enacted the Emergency Housing Rent Control Act, which authorized rent ceilings throughout the State "to prevent speculative, unwarranted and abnormal increases in rents." *See* Ch. 274, § 1, 1946 N.Y. Laws 723, 723 (reproduced at N.Y. Unconsol. Law § 8581 et seq. (McKinney)). In 1962, the Legislature authorized municipalities to enact rent regulations in response to local circumstances. *See* Local Emergency Housing Rent Control Act, ch. 21, § 1, 1962 N.Y. Laws 53, 53-56 (reproduced at N.Y. Unconsol. Law § 8601 et seq. (McKinney)).

In 1969, New York City adopted the Rent Stabilization Law (codified as amended at N.Y. City Admin. Code § 26-501 et seq.). Rent stabilization operates by limiting the amount by which property owners may increase rents each year and imposing certain restrictions on evictions.[3] Two years later, the Legislature, in an "experiment with free-market controls," deregulated newly vacated apartments that had been subject to the City's rent stabilization scheme. *Matter of KSLM-Columbus Apartments, Inc. v. New York State Div. of Hous. & Cmty. Renewal*, 6 A.D.3d 28, 32 (1st Dep't 2004) (quotation marks omitted), *modified*

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[2] DHCR, *Rent Regulations After 50 Years: An Overview of New York State's Rent Regulated Housing* 3 (1993).

[3] By contrast, rent control directly sets rental rates for a relatively small number of covered units. Rent control is not at issue in this suit. (Pet. App. 174a.)

on other grounds, 5 N.Y.3d 303 (2005); *see* Ch. 371, § 6, 1971 N.Y. Laws 1159, 1161-62. The result was "ever-increasing rents," without the anticipated increase in new housing. *La Guardia v. Cavanaugh*, 53 N.Y.2d 67, 74 (1981).

2. Three years after this failed experiment, the Legislature adopted a rent stabilization scheme with the Emergency Tenant Protection Act of 1974 (ETPA), ch. 576, sec. 4, 1974 N.Y. Laws 1510, 1512-33 (reproduced as amended at N.Y. Unconsol. Law § 8621 et seq. (McKinney)).

The ETPA was substantially similar to the City's 1969 law and extended the basic framework of rent stabilization to several additional counties. *See La Guardia*, 53 N.Y.2d at 74-76. The ETPA allowed covered municipalities to adopt rent stabilization upon a "declaration of emergency" if the vacancy rate for certain housing accommodations fell below five percent. ETPA, sec. 4, § 3, 1974 N.Y. Laws at 1513 (Unconsol. Law § 8623). Upon the requisite emergency declaration, the ETPA's rent stabilization scheme applied to rental housing accommodations constructed before 1974 that contained six or more units. (Pet. App. 176a.) Property owners of newer buildings could also opt into rent stabilization for tax benefits. *See* N.Y. Real Prop. Tax Law § 421-a. As amended, the City's 1969 law and the ETPA provide the basic framework for the City's current rent stabilization system and are collectively referred to as the Rent Stabilization Law (RSL).

Since its enactment, the RSL has aimed to ensure a fair and stable rental housing market in two basic ways.

First, the law controls the pace of rent increases for regulated apartments, while also ensuring that landlords can earn a reasonable rate of return. *See* RSL

§§ 26-511, 26-512. To determine permissible rent adjustments in New York City, the Rent Guidelines Board—a nine-person body composed of representatives of property owners, tenants, and the public—annually determines the permissible percentage of rent increases for lease renewals. *See id.* § 26-510(a)-(b). The Board must consider the economic conditions property owners face, such as tax rates and maintenance costs, as well as conditions facing renters as a group, such as vacancy rates and the cost of living. *See id.* § 26-510(b). Accordingly, the authorized increases have shifted depending on changes in economic conditions. In 2022, for example, the Board authorized a 3.25% increase for one-year leases, and a 5% increase for two-year leases.[4]

To account for the unique financial circumstances of individual property owners, the RSL permits landlords to seek additional rent increases following apartment renovations or building improvements. *See* RSL § 26-511(c)(6), (13). And property owners who believe that the standard rent increases fail to afford them a reasonable income may apply for hardship exemptions permitting larger increases. *See id.* § 26-511(c)(6), (6-a); 9 N.Y.C.R.R. (RSC) § 2522.4(b)-(c).[5]

Second, the RSL requires landlords to offer most existing tenants the opportunity to enter into a renewal lease when the existing lease expires. *See* RSL § 26-511(c)(9); RSC § 2523.5(a). But landlords may evict tenants for nonpayment of rent, committing a nuisance, using the apartment for illegal purposes, and unreasonably refusing the owner access to the apartment, among

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[4] N.Y.C. Rent Guidelines Bd., 2022-23 Apartment/Loft Order #54 (June 21, 2022).

[5] State regulations implementing the RSL are codified in the Rent Stabilization Code (RSC).

other grounds. *See* RSC §§ 2524.2, 2524.3. And when a tenant vacates a regulated apartment, landlords may choose their next tenant—subject to a limited exemption for succession rights[6]—and perform background checks on all prospective tenants. *See* N.Y. Real Prop. Law §§ 227-f(1), 238-a(1)(b). An owner may also request identification of all persons living in regulated units on an annual basis. *See* RSC §§ 2520.6(o), 2523.5(e).

An owner wishing to exit the rental market entirely has several options under the RSL. For example, owners may (subject to certain conditions) reclaim a single unit or occupy any number of vacant units for personal use, *see* RSL § 26-511(c)(9)(b), use the building for their own business, RSC § 2524.5(a)(1)(i), demolish the rental building, *id.* § 2524.5(a)(2), or sell the building outright. An owner may also exit rent regulation but remain in the rental market by rehabilitating a substandard or seriously deteriorated building. *Id.* § 2520.11(e).

3. Since 1974, the Legislature has repeatedly reenacted the RSL to preserve its core elements: regulations on the rate of rent increases and limitations on evictions. Over time, the Legislature has amended the law in response to changing political and economic circumstances.

For example, in 1993 and 2003, the Legislature responded to requests from property owners to allow deregulation of certain high-rent units with high-income tenants and gave landlords greater ability to

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[6] Certain family members of rent-stabilized tenants, as well as certain individuals who can prove a close, familial-like relationship to the current tenant, may have the right to succeed to rental of the unit upon the original tenant's departure. *See* RSC §§ 2520.6(o), 2523.5(b)(1).

increase rents upon renewal or vacancy. *See* Ch. 253, §§ 5-7, 1993 N.Y. Laws 2667, 2669-72; Ch. 82, § 4, 2003 N.Y. Laws 2605, 2608. In 2011 and 2015, however, the Legislature responded to reports of ongoing abuses of vacancy increases and deregulation and reduced the amounts by which landlords could increase rent following renovations and improvements and raised the rent and income thresholds for deregulation. *See* Ch. 97, pt. B, §§ 12, 16, 35-36, 2011 N.Y. Laws 787, 807-09, 817-18; Ch. 20, pt. A, §§ 10, 16, 29, 2015 N.Y. Laws 29, 33-34, 36, 41-42.

In 2019, the Legislature enacted the Housing Stability and Tenant Protection Act (HSTPA), which further responded to concerns about tenant harassment and displacement. Among other things, the HSTPA eliminated the RSL provisions authorizing deregulation of certain high-rent apartments, limited certain rent increases upon renewal, and narrowed the provisions allowing evictions for personal use. *See* Ch. 36, pt. D, § 5, 2019 McKinney's N.Y. Laws at 158 (repealing RSL §§ 26-504.1, 26-504.2, 26-504.3); RSL § 26-511(c)(9)(b), (14).

B. Procedural History

1. Petitioners are owners and one manager of New York City residential apartment buildings with units subject to the RSL. In November 2019, they commenced a 42 U.S.C. § 1983 action in the Eastern District of New York, naming as defendants the State of New York, DHCR and its commissioner RuthAnne Visnauskas, the City of New York, and the New York City Rent Guidelines Board and its members. Three tenant advocacy groups intervened as defendants. (Pet. ii; Pet. App. 170a-173a.)

As relevant here, petitioners alleged that the RSL violates the Fifth Amendment as a physical and regulatory taking, both facially and as applied to certain petitioners. Petitioners sought a declaration that the entire RSL is unconstitutional and an injunction permanently enjoining the State and City from enforcing it. (Pet. App. 230a-241a, 246a-247a.) No petitioner asserted that it now wished to exit the residential rental market but was precluded from doing so by the RSL.

2. The district court granted respondents' motions to dismiss the complaint in relevant part.[7] (*See* Pet. App. 22a-24a.) The district court concluded that the RSL does not constitute a facial physical taking because it merely regulates owners' intended use of their property for residential rentals. The district court also dismissed petitioners' as-applied physical takings claims because none of the challenged RSL provisions prevents petitioners from exiting the rental market. (Pet. App. 33a-35a.)

Likewise, the district court dismissed petitioners' facial regulatory takings claim because petitioners failed to allege a taking under the fact-intensive inquiry mandated by *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978). (Pet. App. 36a-41a.) The district court further dismissed the as-applied regulatory takings claims of petitioners 74 Pinehurst LLC and 141 Wadsworth LLC. (Pet. App. 45a-49a.) Petitioners

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[7] The court decided the motions to dismiss together with motions to dismiss a related action raising similar claims. (Pet. App. 22a.) The Second Circuit affirmed in both cases, and the plaintiffs in the related action have also petitioned for a writ of certiorari. *See Community Housing Improvement Program v. City of New York,* No. 22-1095.

voluntarily dismissed the remaining as-applied regulatory takings claims with prejudice. (Pet. App. 11a n.2.)

3. The court of appeals affirmed. First, the court determined that the RSL, on its face, does not effect a physical occupation of petitioners' property insofar as it regulates a voluntary landlord-tenant relationship. (Pet. App. 6a-7a.) Similarly, petitioners' as-applied claims failed because petitioners did not allege "that the RSL forces them to place their properties into the regulated housing market" (Pet. App. 7a) or "that they have exhausted all the mechanisms contemplated by the RSL that would allow a landlord to evict current tenants" (Pet. App. 8a).

Next, the court rejected petitioners' facial regulatory takings claim because, among other factors, "[t]he economic impact of the RSL . . . necessarily varies among properties." (*See* Pet. App. 9a.)

Finally, the court rejected the as-applied regulatory takings claims asserted by 74 Pinehurst and 141 Wadsworth. The court determined that those claims were unripe because neither petitioner had sought hardship exemptions that may have allowed them to increase rents above levels that the RSL generally allows. (Pet. App. 10a-11a.) The court also rejected the claims on the merits, finding that the alleged 20–40% diminution in value of petitioners' property and petitioners' other allegations of economic harm did not support a regulatory taking. (Pet. App. 11a-12a.) The court also determined that petitioners failed to allege that the RSL ran contrary to their reasonable investment-backed expectations given that they acquired their buildings knowing that they would be subject to extensive and evolving regulation. And the court

further concluded that the RSL does not have the character of a taking. (Pet. App. 16a.)

REASONS FOR DENYING THE PETITION

I. PETITIONERS' PHYSICAL TAKINGS CLAIMS DO NOT WARRANT THIS COURT'S REVIEW.

Petitioners purport to assert facial and as-applied physical takings challenges. (Pet. 4, 36.) This case is a poor vehicle to address either claim. The RSL on its face permits changes in use of property and evictions of tenants in many circumstances. Petitioners' concern that the RSL may require landlords to remain in the rental market against their wishes in *other* circumstances is purely hypothetical, as no petitioner now wishes to exit the residential rental market or to evict a tenant for any reason other than the desire to charge higher rents. Similar deficiencies defeat petitioners' materially identical as-applied claims. In any event, the court of appeals correctly rejected petitioners' physical takings claims and there is no split in authority requiring this Court's review.

A. This Case Is a Poor Vehicle to Address Physical Takings Challenges to New York's Rent Stabilization Law.

Petitioners' facial and as-applied claims suffer from several threshold defects that make this case a poor vehicle to address whether the RSL constitutes a physical taking.

1. "A facial challenge to a legislative Act is, of course, the most difficult challenge to mount successfully, since the challenger must establish that no set of circumstances exists under which the Act would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987); *see*

Bucklew v. Precythe, 139 S. Ct. 1112, 1127 (2019). Because "a statute may be invalid as applied to one state of facts and yet valid as applied to another," *Ayotte v. Planned Parenthood of N. New England*, 546 U.S. 320, 329 (2006) (quotation marks omitted), "as-applied challenges are the basic building blocks of constitutional adjudication," *Gonzales v. Carhart*, 550 U.S. 124, 168 (2007) (quotation and alteration marks omitted).

This Court has explained that "[f]acial challenges are disfavored" because they "often rest on speculation" and thus "raise the risk of premature interpretation of statutes on the basis of factually barebones records." *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442, 450 (2008) (quotation marks omitted). Facial challenges are also inconsistent with principles of judicial restraint because they force courts to "anticipate a question of constitutional law in advance of the necessity of deciding it," thereby risking a constitutional ruling broader than necessary to resolve the case at hand. *Id.* (quotation marks omitted). And "facial challenges threaten to short circuit the democratic process by preventing laws embodying the will of the people from being implemented in a manner consistent with the Constitution." *Id.* at 451; *see also New York v. Ferber*, 458 U.S. 747, 767-68 (1982).

This Court has thus cautioned that its power to declare a law unconstitutional "is not to be exercised with reference to hypothetical cases thus imagined." *United States v. Raines*, 362 U.S. 17, 22 (1960); *see also Yazoo & Miss. Valley R. Co. v. Jackson Vinegar Co.*, 226 U.S. 217, 219 (1912). A plaintiff cannot prevail on a facial challenge by merely asserting that the challenged law could not be enforced under different circumstances against someone else. *See Ferber*, 458 U.S. at 767. "Facial challenges of this sort are especially to be

discouraged." *Sabri v. United States*, 541 U.S. 600, 609 (2004).

2. Because petitioners seek wholesale invalidation of the RSL (*see* Pet. App. 246a-247a), they must show that there is "no set of circumstances" under which the RSL would be valid. *See Salerno*, 481 U.S. at 745. Yet there are countless lawful applications of the RSL. For example, petitioners acknowledge that the RSL, on its face, gives landlords various options for changing the use of their property, as well as the power to evict tenants on numerous grounds. (*See* Pet. 5-6; Pet. App. 193a-198a.) In addition, a property owner may agree to abide by the RSL voluntarily in exchange for tax benefits. *See* N.Y. Real Prop. Tax Law §§ 421-a, 489; N.Y. Priv. Hous. Fin. Law § 804.[8]

Petitioners do not account for these indisputably lawful applications of the statute. They merely allege that the available exit options are "narrow." (Pet. App. 193a; *see also id.* at 167a.) But the existence of constitutional applications of the RSL is "fatal" to petitioners' facial challenge. *See Washington State Grange*, 552 U.S. at 457.

At most, petitioners assert that some hypothetical landlord may be forced to remain in the rental market against their wishes. While petitioners assert that the RSL "compel[s] owners to enter into renewal leases when they would rather use the property for other purposes" (Pet. 19), no petitioner alleges that it now

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[8] Although these programs are no longer available for new projects, the Legislature recently passed bills that (similar to earlier programs) provide tax abatements to certain owners who rehabilitate their buildings and in turn agree to abide by the RSL. *See* S. 4709-A/A. 7758, 246th Leg. (N.Y. 2023).

wishes to exit the rental market or that the RSL has stopped it from doing so. Petitioners cannot state a facial claim by ignoring the law's lawful applications and proceeding based solely on hypothetical unconstitutional applications. Such an approach is precisely the sort of maneuver this Court has expressly discouraged. *See Sabri*, 541 U.S. at 609.

3. Petitioners' purely hypothetical allegations of unconstitutionality reveal another vehicle problem: a mismatch between the constitutional defects they allege and the relief they seek. Although petitioners purport to seek invalidation of the entire RSL as a physical taking (Pet. App. 246a-247a), petitioners' legal arguments address only the lease-renewal and tenant-succession provisions (*see* Pet. 18-20 & n.4). Petitioners fail to explain how invalidating the RSL in its entirety—including its limitations on rent increases—could possibly be necessary to address the few purported constitutional infirmities they identify. *See Barr v. American Ass'n of Political Consultants, Inc.*, 140 S. Ct. 2335, 2350-51 (2020) ("The Court presumes that an unconstitutional provision in a law is severable from the remainder of the law or statute.").

Petitioners' attempted broadside against the RSL in its entirety thinly veils their lack of standing to challenge the lease-renewal and tenant-succession provisions at the center of their claims. To establish standing, petitioners must allege an injury that is "fairly traceable" to the defendants' conduct in enforcing the challenged RSL provisions and "likely to be redressed by the requested relief." *See California v. Texas*, 141 S. Ct. 2104, 2113 (2021) (quotation marks omitted). But a ruling that the lease-renewal or tenant-succession provisions are unconstitutional would not remedy petitioners' asserted injuries: the inability to charge

market rents and corresponding diminution in property value. (Pet. App. 198a, 230a.) Petitioners' units—which they apparently wish to continue to offer for rent—would still be subject to rent regulation. This redressability concern is especially potent because no petitioner alleges that they now wish to deny a renewal or successor lease for any reason other than the desire to charge market rents. (*See, e.g.*, Pet. App. 192a-193a.) The same defect forecloses any as-applied physical takings claims that petitioners assert based on the same RSL provisions.

4. Petitioners' as-applied physical takings claims suffer from additional flaws. According to public records, petitioners 74 Pinehurst and 141 Wadsworth were subject to the RSL, at least in part, because they voluntarily participated in the J-51 tax-abatement program.[9] *See* N.Y. Real Prop. Tax Law § 489; 28 Rules of City of N.Y. § 5-03(f). This Court has recognized that even where a law would otherwise effect a taking (which is not the case here), no taking occurs if the property owner voluntarily agrees to submit to regulation "as a condition of receiving certain benefits." *See Cedar Point*, 141 S. Ct. at 2079.

Finally, to the extent petitioners Dino, Dimos, and Vasiliki Panagoulias continue to assert as-applied claims based on the RSL's personal-use provisions (*see*

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[9] *See* N.Y.C. Dep't of Fin., *Manhattan J51 Exempt/Abatement Properties as of Final Roll FY'18-19* (n.d.) (listing 76 Pinehurst Avenue and 611 West 180th Street); *see also* N.Y.C. Hous. Pres. & Dev., *HPDOnline-Overview: 74 Pinehurst Avenue, Manhattan, 10033* (current to Aug. 18, 2023) (listing 74 Pinehurst LLC as owner of 76 Pinehurst Avenue); N.Y.C. Hous. Pres. & Dev., *HPDOnline-Overview: 141 Wadsworth Avenue, Manhattan, 10033* (current to Aug. 18, 2023) (listing 141 Wadsworth LLC as owner of 611 West 180th Street).

Pet. 7-8), those claims are likewise flawed. The Panagouliases allege one unsuccessful attempt to reclaim a unit for personal use in 2011 (a claim which is plainly time-barred) and that their sister and daughter Maria, a nonparty to this case, "has considered" moving into a unit but would be prevented from doing so (a claim which is unripe and speculative). (*See* Pet. App. 187a-188a.) Similarly, certain corporate petitioners complain that only natural persons may recover units for personal use (Pet. App. 188a), but none of them alleges that they wish to recover units for the personal use of any individual.

B. The Court of Appeals Correctly Rejected Petitioners' Physical Takings Claims, and There Is No Conflict Requiring This Court's Review.

The court of appeals correctly applied settled law to reject petitioners' physical takings claims, and there is no split in appellate authority requiring this Court's intervention.

1. Physical takings "are relatively rare" and "easily identified." *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 324 (2002). The "essential question" is "whether the government has physically taken property for itself or someone else—by whatever means." *Cedar Point*, 141 S. Ct. at 2072.

In *Yee*, this Court held that regulations of the landlord-tenant relationship are not physical takings because, "[p]ut bluntly, no government has required any physical invasion of [the owner's] property." 503 U.S. at 528. In *Yee*, owners of mobile-home parks challenged rent regulations that limited their rights to evict tenants and to convert their property to other uses. *See id.* at

524-27. The Court found that such restrictions are not physical appropriations but "merely regulate petitioners' *use* of their land by regulating the relationship between landlord and tenant." *Id.* at 528. The fact that a regulation allegedly deprives landlords of their "ability to choose their incoming tenants . . . may be relevant to a regulatory taking argument," but "does not convert regulation into the unwanted physical occupation of land." *Id.* at 530-31. Because landlords "voluntarily open their property to occupation by others, [they] cannot assert a *per se* right to compensation based on their inability to exclude particular individuals." *Id.* at 531.

Yee followed in step with more than a century of precedent confirming States' "broad power to regulate housing conditions in general and the landlord-tenant relationship in particular without paying compensation for all economic injuries that such regulation entails." *See Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 440 (1982) (collecting cases); *see also FCC v. Florida Power Corp.*, 480 U.S. 245, 252 (1987) ("statutes regulating the economic relations of landlords and tenants are not *per se* takings"). As this Court recognized, "the government may place ceilings on the rents the landowner can charge or require the landowner to accept tenants he does not like without automatically having to pay compensation." *See Yee*, 503 U.S. at 529 (citations omitted). The "element of required acquiescence is at the heart of the concept of occupation," *Florida Power Corp.*, 480 U.S. at 252, and there is no physical taking where the statute does not "require any person . . . to offer any accommodations for rent," *Bowles v. Willingham*, 321 U.S. 503, 517 (1944) (quotation marks omitted).

2. Petitioners misread the court of appeals to have established a "special and particularly deferential rule for physical takings challenges to laws that regulate rental housing" (Pet. 14) such that "ordinary physical-takings principles are irrelevant" (Pet. 21; *see also id.* at 35). The court of appeals did no such thing. Instead, the court correctly held that the RSL does not effect a facial physical taking under this Court's precedents. (Pet. App. 5a-8a.) The court of appeals in no way foreclosed physical takings challenges in the residential rental context based on different laws, or even based on the application of RSL provisions in particular factual circumstances.

3. Petitioners' claims, however, were properly dismissed for several reasons. As in *Yee*, petitioners voluntarily hold out their property for rent, and the RSL provisions to which they object permissibly regulate the terms of the landlord-tenant relationship without effecting a government-forced occupation. *See Yee*, 503 U.S. at 528; *see also Fresh Pond Shopping Ctr., Inc. v. Callahan*, 464 U.S. 875, 875 (1983) (dismissing appeal for want of a substantial federal question in challenge to rent-control ordinance limiting removal of property from rental market). Petitioners have not alleged that the RSL compels all landlords—or even petitioners themselves—to remain in the rental housing market against their wishes.[10] The RSL therefore does not, as petitioners argue (Pet. 13, 22), present the "different case" that *Yee* envisioned "were the statute, on its face

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[10] Petitioners' facial and as-applied physical takings claims thus fail for the same reasons. Indeed, petitioners below conceded that the "structure of the as-applied claims is the same as the facial claims" (Mem. in Opp'n at 34, EDNY ECF No. 56), and the claims are pleaded nearly identically (*see* Pet. App. 230a-234a).

or as applied, to compel a landlord over objection to rent his property or to refrain in perpetuity from terminating a tenancy." *See* 503 U.S. at 528.

First, petitioners argue that the RSL's lease-renewal provision effects a taking "by compelling owners to enter into renewal leases when they would rather use the property for other purposes." (Pet. 18-19.) But petitioners cannot dispute that the RSL gives owners numerous options for changing the use of their property. They may (i) recover one unit for personal use upon a showing of "immediate and compelling" need, RSL § 26-511(c)(9)(b); (ii) remove a building from the rental market for the owner's business use, RSC § 2524.5(a)(1)(i); (iii) demolish a building, *id.* § 2524.5(a)(2); (iv) rehabilitate a building in substandard or seriously deteriorated condition and remove it from rent regulation, *id.* § 2520.11(e); (v) convert the building to a cooperative or condominium with the agreement of a certain portion of residents, N.Y. Gen. Bus. Law § 352-eeee; or (vi) sell a building outright.

Under *Yee*, the fact that these options are allegedly difficult to utilize in practice does not amount to a taking. *See* 503 U.S. at 528-29. And here, no petitioner alleges that they now would "rather use the property for other purposes" and have attempted to follow the procedures for doing so. (*See* Pet. 19.)

Second, petitioners assert that the RSL's lease-renewal and tenant-succession provisions effect a taking regardless of whether the RSL allows them to exit the rental market because they are "compelled to suffer occupancy by the tenant and the tenant's successors *indefinitely*." (*See* Pet. 20 n.4; *see also id.* at 19, 21.) But this argument runs headlong into *Yee*'s holding that the government may require a landlord "to accept tenants

he does not like." 503 U.S. at 529; *see also Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 261 (1964). Despite petitioners' assurances that they "do not challenge that principle" (Pet. 20 n.4), their position necessarily does so. Petitioners provide no reason for wanting to exclude tenants other than the desire to charge higher rents. But *Yee* considered and rejected the argument that a law limiting evictions, under which property owners could "no longer set rents or decide who their tenants will be," constituted a physical taking. 503 U.S. at 526. Petitioners' assertion that any limitation of their ability to "terminate a tenancy" effects a physical taking (Pet. 19) simply ignores *Yee*.

In any event, petitioners ignore landlords' substantial rights under the RSL to control who occupies their property. Among other things, landlords can select their own tenants upon vacancy, refuse to renew leases to tenants who do not use regulated units as their primary residences, and expeditiously evict tenants on a variety of grounds. *See* RSC §§ 2524.3-2524.5. And succession rights extend only to individuals who have long resided with the tenant and share a close, familial-like relationship.[11] *See id.* §§ 2520.6(o), 2523.5(b)(1). There is thus no merit to petitioners' contention that the RSL eliminates landlords' exclusion rights or requires that leases be renewed "indefinitely" (Pet. 20 n.4 (emphasis omitted)). And while petitioners may wish to rent their property to residential tenants unconstrained by rent regulation, the Constitution does not give them that

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[11] This Court has previously declined to consider a takings challenge to the RSL's tenant-succession provisions. *See Rent Stabilization Ass'n of N.Y.C., Inc. v. Higgins*, 83 N.Y.2d 156 (1993), *cert. denied*, 512 U.S. 1213 (1994).

right. *See, e.g.*, *Pennell v. City of San Jose*, 485 U.S. 1, 12-13 & n.6 (1988).

4. Despite petitioners' assertions to the contrary (Pet. 17, 21), the court of appeals correctly applied this Court's decision in *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063 (2021).

In *Cedar Point*, this Court held that a California law constituted a physical taking where it granted labor organizations a right to "take access" to farmland to speak with workers. 141 S. Ct. at 2069-70, 2079-80. In reaching that conclusion, the Court emphasized the importance of "longstanding background restrictions on property rights," including that farms are *not* generally open to the public. *See id.* at 2079-80. The Court thus distinguished its prior case law holding that intrusions on properties that owners have already opened to third parties in some manner—like private shopping malls that are generally open to the public—are not physical takings but are at best subject to a regulatory takings analysis. *See id.* at 2076-77 (discussing *PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74 (1980)).

The court of appeals appropriately distinguished *Cedar Point* in finding that the RSL does not effect a physical taking. (*See* Pet. App. 6a.) In contrast to the property at issue in *Cedar Point*, landlords generally invite third parties to occupy the premises as tenants and the regulations challenged here govern the landlord-tenant relationship that owners have voluntarily entered. *See Yee*, 503 U.S. at 528.[12]

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[12] Statutory rent regulation like the RSL is also "consistent with longstanding background restrictions on property rights" and thus would not effect a taking even if it involved a physical invasion (which it does not). *See Cedar Point*, 141 S. Ct. at 2079. Rent

(*continues on next page*)

Petitioners likewise misplace their reliance (Pet. 19) on *Horne v. Department of Agriculture*, which held that a statute requiring raisin growers to reserve a portion of their crop for the government was a physical taking. 576 U.S. 350, 354-55, 362 (2015). In so holding, the Court rejected an argument that the reserve requirement was not a taking because "raisin growers voluntarily choose to participate in the raisin market." *Id.* at 365. But unlike *Horne*, where the government physically confiscated a portion of farmers' crops without the promise of compensation, the RSL does not result in a "compelled physical occupation" because property owners willingly accept tenants' presence in apartments when they choose to become landlords. *See Yee*, 503 U.S. at 530-31. In addition, landlords remain free to collect rents (subject to certain limits on the amount of annual increase).

For these reasons, there is also no tension between *Yee*, on one hand, and *Cedar Point* and *Horne*, on the other, much less one that would justify overruling *Yee*, as petitioners casually suggest with no discussion of *stare decisis* principles. (*See* Pet. 23-24.) Those principles militate strongly against overruling *Yee*, which is consistent with decades of precedent (see *supra* at 17) and from which no Justice dissented. Indeed, for cases like *Yee* "involving property and contract rights . . . conditions favoring *stare decisis* are at their acme . . . because parties are especially likely to rely on such precedents when ordering their affairs." *See Kimble v.*

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regulation in New York City dates back a century, *see* 1 *Report of the New York State Temporary Commission on Rental Housing* 42-46 (1980), and antecedents to the RSL have existed since World War II (see *supra* at 4). *Cf. Tahoe-Sierra*, 535 U.S. at 352 (Rehnquist, C.J., dissenting) (New York City zoning laws dating to 1916 qualified as "a longstanding feature of state property law").

Marvel Ent., LLC, 576 U.S. 446, 457 (2015) (quotation marks omitted).

5. Finally, petitioners are incorrect to argue (Pet. 16-18) that the decision below conflicts with *Heights Apartments, LLC v. Walz*, 30 F.4th 720 (8th Cir. 2022).

Heights Apartments concerned a COVID-19–related executive order which precluded evictions except where a tenant seriously endangered the safety of other residents or engaged in illicit activity. *Id.* at 733. The Eighth Circuit concluded that the plaintiff landlord stated a physical takings claim because the order "forced landlords to accept the physical occupation of their property regardless of whether tenants provided compensation" and "forbade the nonrenewal and termination of ongoing leases, even after they had been materially violated." *Id.* at 733. Thus, the court concluded that the executive order had deprived the landlord "of its right to exclude existing tenants without compensation." *Id.*

In contrast, the RSL does not prevent landlords from excluding lease violators, including for nonpayment of rent. To the contrary, landlords retain substantial control over who rents their property, including robust eviction powers. See *supra* at 6-7, 20. The RSL also does not force landlords to rent their property without compensation but rather provides multiple mechanisms to ensure that landlords can receive a reasonable return, including by allowing landlords to offset the cost of improvements and renovations through rent increases, providing hardship exemptions to landlords, and requiring that the Rent Guidelines Board consider

landlords' costs and expenses in setting maximum annual rent increases.[13] See *supra* at 6.

To the extent there is any question about whether *Heights Apartments* reached the correct result under the unique circumstances presented, *see Heights Apartments, LLC v. Walz*, 39 F.4th 479, 480 (8th Cir. 2022) (Colloton, J., dissenting from denial of rehearing en banc), this case does not provide an appropriate vehicle to resolve that question because it arises from wholly distinct facts.

II. PETITIONERS' REGULATORY TAKINGS CLAIMS DO NOT WARRANT THIS COURT'S REVIEW.

Regulations that restrict an owner's ability to use his or her property are judged by a different standard than physical occupations. *Cedar Point*, 141 S. Ct. at 2071. This Court evaluates such claims under *Penn Central*, "balancing factors such as the economic impact of the regulation, its interference with reasonable investment-backed expectations, and the character of the government action." *Id.* at 2071-72.

This case is a poor vehicle to consider petitioners' regulatory takings claims, and the court of appeals correctly rejected them under *Penn Central*. Petitioners

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[13] The law challenged in *Kagan v. City of Los Angeles* likewise did not compel the plaintiff landlord to rent property without compensation or to lease violators; rather, the case involved a landlord's inability to reclaim a unit for personal use where the owner retained eviction rights and the ability to exit the rental market. *See* No. 21-55233, 2022 WL 16849064, at *1 (9th Cir. Nov. 10, 2022), *pet. for cert. filed*, No. 22-739 (U.S. Feb. 7, 2023). *Ballinger v. City of Oakland*, which involved a relocation fee associated with personal-use reclamation, is even further afield. *See* 24 F.4th 1287, 1290-91 (9th Cir. 2022), *cert. denied*, 142 S. Ct. 2777 (2022).

identify no split in authority, and their call for *Penn Central* to be overruled is meritless.

A. This Case Is a Poor Vehicle to Address Regulatory Takings Challenges to New York's Rent Stabilization Law.

Threshold defects in petitioners' facial and as-applied regulatory takings claims make this case a poor vehicle to address them.

1. This Court's observation that facial constitutional challenges are generally disfavored (see *supra* at 12-13) applies with special force to petitioners' facial regulatory takings claim. Such claims "face an uphill battle," *Tahoe-Sierra*, 535 U.S. at 320 (quotation marks omitted), because the *Penn Central* inquiry is particularized and must be "informed by the specifics of the case," *Murr v. Wisconsin*, 582 U.S. 383, 394 (2017).

Petitioners' challenge to the RSL is improper for facial review because the law's effects vary substantially across property type, building size, and owner. For example, the effects of the RSL's limits on rent increases differ from landlord to landlord, who each own buildings with different quantities of regulated units offered at different rents. (*See* Pet. App. 9a.) And landlords may seek individualized hardship exemptions allowing them to charge higher rents, as well as rent increases to offset specific building improvements. See *supra* at 6. Similarly, landlords' reliance interests may vary significantly based on when they purchased their property. (*See* Pet. App. 84a-85a.)

2. Petitioners' as-applied regulatory takings claims suffer from a separate defect: they are not ripe. To ripen their claims, petitioners were required to take "reasonable and necessary steps to allow regulatory agencies to

exercise their full discretion," which includes giving the agency "the opportunity to grant any variances or waivers allowed by law." *See Palazzolo v. Rhode Island*, 533 U.S. 606, 620-21 (2001). "As a general rule, until these ordinary processes have been followed the extent of the restriction on property is not known and a regulatory taking has not yet been established."[14] *Id.* at 621.

The RSL allows landlords to apply for hardship exemptions permitting them to charge higher rents than would otherwise be authorized based on a landlord's inability to earn a sufficient return. RSL § 26-511(c)(6), (6-a); RSC § 2522.4(b)-(c). But petitioners "have not sought exemptions." (Pet. App. 10a-11a.) Petitioners' failure to seek, let alone obtain, a final administrative decision on the RSL's application to their properties renders their claims unripe. *See Hodel v. Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. 264, 297 (1981) (rejecting as-applied takings claim when plaintiffs had not sought variance or waiver).

The court of appeals correctly rejected as mere "[s]peculation" (Pet. App. 11a) petitioners' arguments that hardship exemptions are "rarely granted" and offer only "modest" relief (Pet. 33). Moreover, petitioners' assertion that hardship exemptions cannot address their injuries is mistaken. (*See* Pet. 33.) 74 Pinehurst

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[14] This Court also articulated this finality requirement in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186-94 (1985). In *Knick v. Township of Scott*, this Court overruled *Williamson County*'s holding that federal plaintiffs must seek just compensation through state procedures before filing a Fifth Amendment takings claim in federal court, but the Court did not disturb *Williamson County*'s additional holding (relevant here) that "any taking was . . . not yet final" because "the developer still had an opportunity to seek a variance." *See* 139 S. Ct. 2162, 2169-70 (2019).

and 141 Wadsworth are the only petitioners that assert as-applied regulatory takings claims. (Pet. App. 11a & n.2.) Those petitioners do not allege that they wish to evict any particular tenant, reclaim units for personal use, or use their property for other purposes (*see* Pet. 33); they simply wish to charge higher rents (*see* Pet. App. 198a, 201a-202a, 207a-208a).

Petitioners misplace their reliance (Pet. 33-34) on *Pakdel v. City & County of San Francisco*, 141 S. Ct. 2226 (2021) (per curiam). *Pakdel* concluded only that the finality requirement did not require full exhaustion of administrative remedies where there was "no question" about how the applicable regulations applied to the plaintiffs in that case, who had twice sought and been denied exemptions from the challenged regulation. *Id.* at 2229-30. Here, petitioners have not taken even the first step of seeking an exemption.

3. Finally, the as-applied claims asserted by 74 Pinehurst and 141 Wadsworth are independently barred because those petitioners agreed to voluntarily submit to the RSL in exchange for tax benefits, as discussed above (at 15 & n.9).

B. The Court of Appeals Correctly Rejected Petitioners' Regulatory Takings Claims.

Petitioners' facial and as-applied regulatory takings claims fail under a straightforward application of *Penn Central*, and there is no basis to overrule *Penn Central* as petitioners propose.

1. Petitioners do not plausibly allege that the RSL disrupted their reasonable investment-backed expectations, which are "particularly" important to the regulatory takings analysis. *See Penn Central*, 438 U.S. at 124. Such expectations are "informed by the law in force in

the State in which the property is located." *See Arkansas Game & Fish Comm'n v. United States*, 568 U.S. 23, 38 (2012); *see also Murr*, 582 U.S. at 397-98. Thus, a plaintiff who knowingly does business in a highly regulated field cannot claim that its reasonable expectations have been defeated when "the legislative scheme is buttressed by subsequent amendments to achieve that legislative end." *Concrete Pipe & Prods. of Cal., Inc. v. Construction Laborers Pension Tr. Fund*, 508 U.S. 602, 645 (1993) (quotation marks omitted) (collecting cases).

Petitioners do not dispute that landlords' expectations vary widely depending on when they purchased their property. Because petitioners cannot establish that the RSL disrupted the expectations of all landlords, their facial claim necessarily fails. (*See* Pet. App. 84a-85a.)

Petitioners also fail to allege that the RSL disrupted the expectations of 141 Wadsworth and 74 Pinehurst. As the court of appeals found, those petitioners, which acquired their properties in 2003 and 2008, respectively, "could have expected the RSL to include the type of restrictions they now claim constitute a taking." (Pet. App. 13a.) By that time, the RSL had existed for decades, and petitioners "would have anticipated" that the RSL's ever-evolving regulatory scheme would apply to their properties. (Pet. App. 14a; *see id.* at 13a-15a.) And the RSL provisions to which petitioners object existed in substantially similar form prior to the HSTPA. (*See* Pet. App. 14a.)

Petitioners do not explain how the RSL runs counter to their investment-backed expectations. (*See* Pet. 29-30.) The complaint alleges that petitioners did not expect a diminished "ability to recover and earn a

reasonable rate of return." (Pet. App. 238a.) But as the court of appeals explained, "it would not have been reasonable" for petitioners to assume that the RSL's rent limitations would remain static given the long history of changes to the law. (Pet. App. 15a.)

Petitioners quote the court of appeals out of context as setting down a "categorical rule" that the RSL can *never* effect a regulatory taking. (Pet. 27.) But the quoted passage from *Community Housing* merely observes that "no property owner could reasonably expect the continuation of any particular combination of RSL provisions" (Pet. App. 85)—not that the manner or degree of every future change is to be reasonably expected. Petitioners are thus wrong to argue, based on that flawed premise, that the decision below conflicts with either *Palazzolo* or the decisions of other circuits. (*See* Pet. 27-28, 29-30.)

2. Petitioners' allegations of economic harm are also inadequate. This Court has explained that "mere diminution in the value of property, however serious, is insufficient to demonstrate a taking," *Concrete Pipe*, 508 U.S. at 645, and has rejected regulatory takings challenges based on diminutions in value of 75% to nearly 90%, *Penn Central*, 438 U.S. at 131.

At the outset, petitioners do not dispute the court of appeals' holding that their facial claims fail because the RSL's economic impact "necessarily varies among properties." (Pet. App. 9a.)

And the court of appeals was also right to find (Pet. App. 11a-12a) that the as-applied claims were not supported by the 20–40% diminution in value that petitioners alleged. *Cf. Concrete Pipe*, 508 U.S. at 645 (alleged diminution of 46% not indicative of taking). Beyond that, petitioners "fail[ed] to allege any specific impact on profit or revenue" or "that the RSL has

rendered any property unusable for permitted purposes or otherwise unmarketable." (Pet. App. 12a.)

Petitioners incorrectly argue that the court of appeals considered a 60–70% diminution in value insufficient to support a taking as a matter of law or "insiste[d] on a near-total destruction of value." (*See* Pet. 26; *see also id.* at 29.) To the contrary, the court observed that 74 Pinehurst and 141 Wadsworth alleged only a 20–40% diminution in value based on the enactment of HSTPA in 2019. (Pet. App. 11a-12a.) The court explained that this diminution in value alone did not give rise to a taking and *further* determined that the sum of petitioners' allegations did not show that "the economic impact factor tilts in their favor." (Pet. App. 12a.) Thus, petitioners are wrong to suggest that the court of appeals established a "rigid rule" respecting diminutions in value that conflicts with other circuits' application of *Penn Central*.[15] (*See* Pet. 26-27.) And they cite no authority holding that their allegations of economic impact are sufficient to state a claim.

Petitioners' reference to a 60–70% diminution in value purports to include within the scope of their claims the alleged economic effects of the RSL before the 2019 amendments. But the complaint does not plausibly allege how earlier iterations of the RSL affected the value of petitioners' property. It merely references generalized "financial data," which petitioners use to speculate about their property values. (*See* Pet. App. 198a; *see also id.* at 84a (rejecting reliance on data showing "the average economic effects of the RSL").)

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[15] Nor did the court of appeals look to lost profits instead of lost value, as petitioners assert. (Pet. 27 n.5.) Rather, the court examined petitioners' allegations as to lost profit and lost value and found all of the allegations unpersuasive. (Pet. App. 11a-13a.)

3. Finally, petitioners do not plausibly allege that the RSL has the character of a taking. That factor asks whether the regulation "amounts to a physical invasion or instead merely affects property interests through some public program adjusting the benefits and burdens of economic life to promote the common good." *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 539 (2005) (quotation marks omitted).

As discussed (at 19-20), the RSL does not, as petitioners argue, approximate a physical invasion by "allow[ing] tenants to occupy their property indefinitely" (Pet. 30). And the court of appeals correctly found that "the RSL is part of a comprehensive regulatory regime" which the Legislature has determined "is necessary to prevent 'serious threats to the public health, safety, and general welfare.'" (*See* Pet. App. 16a (quoting RSL § 26-501).)

Petitioners do not dispute that the Legislature enacted the RSL to serve "important public interests," *see Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 485 (1987), and instead accuse the court of appeals of ignoring the RSL's impact on their property rights (Pet. 31). But the court did not ignore petitioners' rights; it simply rejected petitioners' flawed argument that the RSL necessarily effects a taking because it burdens some property owners more than others. (*See* Pet. App. 16a.) "Legislation designed to promote the general welfare commonly burdens some more than others," and the fact that a landlord is "uniquely burdened" does not automatically give rise to a taking. *See Penn Central*, 438 U.S. at 133.

Based on this misconception, petitioners purport to identify a circuit split. (Pet. 28-29.) But they merely collect cases where courts have reached different

conclusions about dissimilar laws. *See Cienega Gardens v. United States*, 331 F.3d 1319, 1338 (Fed. Cir. 2003) (elimination of preexisting contract rights of "a few private property owners" to exit low-rent housing program had character of taking); *Heights Apartments*, 30 F.4th at 734-35 (eviction moratorium was not "broadly beneficial" and thus had character of taking).

Justice Scalia's dissenting opinion in *Pennell* does not support petitioners. The ordinance challenged in *Pennell* allowed for tenant-by-tenant rent reductions based on individual hardship, 485 U.S. at 9, which, in Justice Scalia's view, improperly forced landlords to subsidize specific "renters who are too poor to afford even *reasonably* priced housing" through no fault of the landlord, *id.* at 21 (Scalia, J., concurring in part & dissenting in part) (emphasis added). But the RSL directs the Rent Guidelines Board to consider objective, generally applicable economic data in setting the maximum rate of permissible rent increases for all regulated units. *See* RSL § 26-510(b). Accounting for such conditions does not sever the "connection" between "the high-rent problem" and its source and thus does not implicate Justice Scalia's concerns. *See Pennell*, 485 U.S. at 22 (Scalia, J., concurring in part & dissenting in part). Regardless, this Court rejected the core logic underpinning the *Pennell* dissent when it subsequently held that the purpose-driven test on which Justice Scalia relied is "not a valid takings test." *See Lingle*, 544 U.S. at 548.

4. Because petitioners cannot state a claim under *Penn Central*, they instead ask this Court to jettison the longstanding and seminal ruling. In so arguing, petitioners ignore this Court's repeated reaffirmance of the *Penn Central* framework. *See, e.g.*, *Cedar Point*, 141 S. Ct. at 2072; *Murr*, 582 U.S. at 393; *Lingle* 544 U.S. at

538-39. Indeed, this Court has recently explained that this framework promotes the "flexibility" that has become a "central dynamic of the Court's regulatory takings jurisprudence" by allowing courts to balance individual property rights against "the government's well-established power to 'adjus[t] rights for the public good.'" *See Murr*, 582 U.S. at 394 (quoting *Andrus v. Allard*, 444 U.S. 51, 65 (1979)).

Petitioners insist without much elaboration that the Court adopt a test better "grounded in the Constitution." (Pet. 32-33.) For example, petitioners contend that alleging "the functional equivalent of a practical ouster" should suffice to state a regulatory taking. (Pet. 33 (quotation marks omitted).) Yet even under that standard, petitioners' claims fail: Petitioners voluntarily rent their property to tenants, wish to continue doing so, and retain substantial rights to change the use of their property and to evict tenants. See *supra* at 18-21.

* * *

Balancing the competing interests of landlords and tenants is "a quintessential function of a legislature." (Pet. App. 70a.) Landlords have repeatedly taken their cause to the Legislature with varying degrees of success. Petitioners' displeasure with the most recent legislative amendments does not present a concern of constitutional magnitude warranting this Court's intervention much less the overhaul of decades-old precedent. Petitioners must instead, as in the past, seek recourse through the political process. *Cf. National Pork Producers Council v. Ross*, 143 S. Ct. 1142, 1161 (2023) (plurality op.).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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