No. 22-1170

IN THE

Supreme Court of the United States

335-7 LLC, et al.,

Petitioners,

v.

CITY OF NEW YORK, 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 COMMISSIONER RUTHANNE VISNAUSKAS

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Whether the court of appeals properly rejected petitioners' facial physical takings challenge to New York's Rent Stabilization Law given the law's numerous constitutional applications.

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).

3. Whether the court of appeals properly rejected petitioners' attempt to challenge the Rent Stabilization Law as confiscatory rate-setting, where this Court has never applied that doctrine to rent regulation.

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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 (five corporate property owners) initiated this action seeking to invalidate the RSL in its entirety as purportedly violative of the Takings Clause of the Fifth Amendment to the

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

United States Constitution. The U.S. District Court for the Southern District of New York (Ramos, J.) dismissed the complaint for failure to state a claim (Pet. App. 14-53), and the Second Circuit affirmed (Pet. App. 1-13). Petitioners now seek certiorari. The petition should be denied.

First, petitioners ask this Court to review whether the RSL constitutes a facial physical taking. 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 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 as they request would be necessary to remedy the purported constitutional infirmities they identify.

Threshold defects aside, 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, on its face,

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 them. At the outset, this Court has recognized that regulatory takings challenges are generally unsusceptible to facial review under the fact-intensive *Penn Central*, 438 U.S. 104 (1978), inquiry. In addition, petitioners' as-applied claims are unripe because they did not seek statutory exemptions from limits on rent increases. In any event, the court of appeals correctly applied *Penn Central* to dismiss petitioners' claims. While petitioners suggest that "clarification" of the *Penn Central* test is needed, they merely note that different courts have reached different results applying *Penn Central* to different facts.

Third, petitioners ask this Court to review whether the RSL's process for determining annual rent increases effects a so-called "confiscatory taking" under this Court's cases governing rate-setting for public utilities. This claim is also unripe, and in any event, this Court has distinguished rent regulation from the public-utility context in which the doctrine applies. Moreover, petitioners fail to state a confiscatory takings claim on the merits.

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. (CA2 App. 20.) Rent control is not at issue in this suit.

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. (CA2 App. 20.) 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

[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 increase rents upon renewal or vacancy. *See* Ch. 253, §§ 5-7,

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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).

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).

The HSTPA also adjusted the procedure for converting regulated buildings to cooperatives or condominiums by, inter alia, requiring the agreement of 51% of tenants (up from 15%). N.Y. Gen. Bus. Law § 352-eeee. In 2022, the Legislature responded to concerns from small-building owners by modifying the law to allow conversion of owner-occupied buildings with five or fewer units with the agreement of only 15% of tenants. *See id.*; Ch. 696, 2022 McKinney's N.Y. Laws (Westlaw).

B. Procedural History

1. Petitioners are five corporate entities who are current and former owners of New York City residential apartment buildings with units subject to the RSL. In February 2020, they commenced a 42 U.S.C. § 1983 action in the Southern District of New York, naming as defendants the City of New York, the New York City Rent Guidelines Board, and RuthAnne Visnauskas, Commissioner of DHCR. Two tenant advocacy groups intervened as defendants. (Pet. App. 22, 26.)

As relevant here, petitioners alleged that the RSL violates the Fifth Amendment as a physical, regulatory, and confiscatory taking. Petitioners sought a declaration that the entire RSL is unconstitutional and an injunction permanently enjoining the State and City from enforcing it. (CA2 App. 110-119.) No petitioner asserted that it 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. (Pet. App. 15.) 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. (Pet. App. 32-37.) The district court also dismissed petitioners' as-applied physical takings claims because none of the challenged RSL provisions prevented petitioners from exiting the rental market. (Pet. App. 37-38.)

Likewise, the district court determined that petitioners failed to state a facial regulatory takings claim under the fact-intensive inquiry mandated by *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978). (Pet. App. 40-46.) The district court further dismissed petitioners' as-applied regulatory takings claims as unripe given that petitioners had not

attempted to seek statutory hardship exemptions to offset their alleged economic harm. (Pet. App. 47-48.) In any event, petitioners failed to state an as-applied claim under *Penn Central*. (Pet. App. 49-50.)

Finally, the district court rejected petitioners' so-called "confiscatory takings" claim because such claims are limited to the context of public utilities and, unlike public utilities, petitioners are not required to hold out their properties for rent. (Pet. App. 50-51.)

3. The court of appeals affirmed in a summary order. The court began by acknowledging the long history of amendments to the RSL, noting that the law is the product of "finely tuned, legislative judgments." (Pet. App. 4 n.2 (quotation marks omitted).) The court then rejected petitioners' constitutional challenges.

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. 5.) Similarly, petitioners' as-applied claims failed because they were premised solely on petitioners' alleged inability to charge market-rate rents (Pet. App. 7); petitioners had not "attempted to use any of the available methods to exit the market or evict problematic tenants" (Pet. App. 8).

Next, the court rejected petitioners' facial regulatory takings claim given that the RSL imposed "different economic effects on different landlords" with "varying expectations" who, in any event, could not "reasonably expect the continuation of any particular combination of RSL provisions." (Pet. App. 5-6 (quotation marks omitted).) The court also concluded that petitioners' as-applied regulatory takings claims were both unripe and meritless. (Pet. App. 8-12.) On the merits, the court found that petitioners largely failed to allege "the

specific economic impact of the law on their buildings" and would have reasonably anticipated that their property would be subject to regulation. (Pet. App. 11). In addition, the court determined that the RSL lacks the character of a taking. (Pet. App. 11-12.)

Finally, the court rejected petitioners' confiscatory takings claim, observing that petitioners "cite[d] no case that has ever applied the confiscatory taking doctrine in the landlord-tenant context." (Pet. App. 12.)

REASONS FOR DENYING THE PETITION

I. PETITIONERS' PHYSICAL TAKINGS CLAIM DOES NOT WARRANT THIS COURT'S REVIEW.

Petitioners seek this Court's review of their physical takings claim only as a facial challenge to the statute, abandoning any as-applied physical takings claim.[7] (*See* Pet. 20 (arguing only that "[t]he RSL imposes a facial per se physical taking").) This case is a poor vehicle to address that challenge because the RSL 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 wishes to exit the residential rental market or to evict a tenant for any reason other than the desire to charge higher rents. In any event, the court of appeals correctly rejected petitioners' physical takings claim based on a

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[7] Moreover, the as-applied physical takings claims that petitioners asserted below were duplicative of their facial physical takings claim. (*See* Pet. App. 37 ("Plaintiffs' allegations supporting their as-applied physical taking challenges are sparse."); *see also* CA2 App. 110-112.)

century of precedent 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' determination to proceed with a facial challenge makes this case a poor vehicle to address whether the RSL effects 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* CA2 App. 117-119), 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, 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 *supra* at 6-7. 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]

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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).

Petitioners make no attempt to grapple with these indisputably lawful applications of the statute other than to argue that they are not available to all landlords (Pet. 9), or are difficult to utilize in practice (Pet. 11-12). But the existence of constitutional applications of the statute 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 allege that “they are not free to exit by changing the use of their property” (Pet. 22), no petitioner alleges that it wishes to exit the rental market or that the RSL has stopped it from doing so. Petitioner FGP 303 LLC in fact sold its property and exited the rental market before this lawsuit ever commenced. (CA2 App. 17-18.) 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 (CA2 App. 117-118), petitioners’ legal arguments address only the RSL’s lease-renewal and tenant-succession provisions (Pet. 20-22). Petitioners fail to explain how invalidating the RSL in its entirety 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 physical takings claim. 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 and tenant-succession provisions are unconstitutional would not remedy petitioners' asserted injuries: the inability to charge market rents and corresponding diminution in property value. Petitioners' units—which they apparently wish to continue to offer for rent—would still be subject to rent regulation. (*See* CA2 App. 19, 110-112.) This redressability concern is especially potent because no petitioner alleges that they wish to deny a renewal or successor lease for any reason other than the desire to charge market rents.

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

The court of appeals correctly applied settled law to reject petitioners' physical takings claim, 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 an "open door" theory of physical takings by which landlords must acquiesce to government-forced occupation if they offer property for rent. (*See* Pet. 17-18.) The court of appeals did no such thing. Instead, it correctly held that the RSL does not effect a facial physical taking under this Court's precedents. (Pet. App. 5.) 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. *See also 74 Pinehurst v. New York*, 59 F.4th 557, 564 (2d Cir. 2023) (rejecting as-applied phys-

ical takings claim based on case-specific pleading deficiencies), *pet. for cert. filed*, No. 22-1130 (U.S.).

3. Petitioners' facial challenge, however, was 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 plausibly alleged that the RSL compels all or even most landlords to remain in the rental housing market against their wishes.

First, petitioners argue that the RSL deprives landlords of the ability to decide who may occupy their property and requires them to offer renewal leases. (Pet. 20, 22.) Because petitioners do not allege that they wish to exit the rental market, this argument runs headlong into *Yee*'s holding that the government may require a landlord "to accept tenants he does not like."[9] 503 U.S. at 529; *see also Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 261 (1964). Petitioners also 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

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[9] Because petitioners cannot distinguish *Yee*, they suggest in a footnote that *Yee* should be overruled. (Pet. 22 n.2.) Yet petitioners provide no justification for overruling decades of precedent (see *supra* at 17), and there is none.

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.[10] *See id.* §§ 2520.6(o), 2523.5(b)(1). There is thus no merit to petitioners' contention that the RSL "fill[s] a building's apartments with permanent tenants" or "creat[es] a government mandated tenancy in perpetuity." (*See* Pet. 20.)

Second, petitioners argue that the RSL deprives them of the ability to "possess and use the property after the term of the lease expires." (Pet. 21.) 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, 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 approval of a certain portion of tenants, N.Y. Gen. Bus. Law § 352-eeee, or (vi) sell a building outright, as petitioner FGP 303 LLC did here. The existence of these exit options squarely contradicts petitioners' contention that "they are not free to exit by changing the use of their property" (Pet. 22), and petitioners cannot state a facial claim simply by alleging that these exit options

[10] 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).

are difficult to utilize (*see* Pet. 8-11). *See Yee*, 503 U.S. at 528-29.

Finally, petitioners are incorrect to suggest that the RSL imposes a physical taking because they have not "voluntarily submitt[ed] to RSL regulation." (*See* Pet. 22 (emphasis omitted).) The relevant question is whether petitioners "voluntarily open their property to occupation by others," *Yee*, 503 U.S. at 531—not whether they voluntarily submit to regulation. Although petitioners may wish to rent to residential tenants unconstrained by rent regulation, the Constitution does not give them that 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. 5.) 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.[11]

5. Finally, petitioners are incorrect to argue (Pet. 19-20) 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.*

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[11] 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 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").

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, 18-19. 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. See *supra* at 5-6.

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' facial and as-applied regulatory takings claims. The fact-intensive *Penn Central* inquiry is generally incompatible with facial challenges. And petitioners' as-applied claims are not ripe because petitioners failed to seek statutory hardship exemptions. In any event, the court of appeals correctly rejected all of petitioners' regulatory takings claims on the merits.

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. And landlords may seek individualized hardship exemptions allowing them to charge higher rents and may seek further rent increases to offset specific building improvements. See *supra* at 6. Similarly, landlords' reliance interests may vary signifi-

cantly based on when they purchased their property. (*See* Pet. App. 5.)

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."[12] *Id.* at 621; *see also Suitum v. Tahoe Reg'l Plan. Agency*, 520 U.S. 725, 737 (1997) (explaining that "a landowner must . . . actually seek such a variance to ripen his claim").

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 attempted to apply for any of the exemptions allowed by the RSL." (Pet. App. 9.) Petitioners' failure to seek, let alone obtain, a final administrative decision on the RSL's application to their properties renders

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[12] This Court also articulated this finality requirement in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186-194 (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).

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 petitioners' arguments (Pet. 30 n.3) that certain petitioners do not qualify for hardship exemptions and that the exemptions are "illusory" and "futile." (*See* Pet. App. 8-10.) As the court explained, petitioners "have not, themselves, experienced any repetitive or otherwise unfair procedures" and instead "argue in the abstract that the [exemption] procedures are generally known to be inefficient and ineffective and that the exemptions would not address all of their concerns." (Pet. App. 10.) Petitioners' bare allegations of futility are not plausible where they have never applied for such exemptions and thus have never experienced any concrete obstacles. And without knowing how DHCR would have responded to petitioners' requests for exemptions, it is impossible "to know with clarity how precisely the RSL affects" them. (Pet. App. 10.)

Petitioners misplace their reliance (Pet. 30 n.3) 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.

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

As below, petitioners make no effort to distinguish between facts supporting their facial and as-applied claims. Both claims fail under a straightforward application of *Penn Central*.

1. Petitioners fail to 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. Those 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). 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).

The court of appeals rightly observed that "any reasonable landlord involved in New York's rental market would have anticipated their rental properties would be subject to regulations, and that those regulations in the RSL could change." (Pet. App. 11 (quotation marks omitted).) And given the RSL's long history of legislative and regulatory changes (see *supra* at 4-8), "no property owner could reasonably expect the continuation of any particular combination of RSL provisions" (Pet. App. 5-6 (quotation marks omitted)).

Petitioners do not specify which aspects of the RSL supposedly ran counter to their investment-backed expectations (or counter to the expectations of landlords

at large for purposes of a facial challenge). (*See* Pet. 33-34.) And they are incorrect to argue that the court of appeals gave the government free rein to engage in limitless regulation "as long as the government has regulated previously." (*See* Pet. 34.) Rather, in holding that the RSL did not upset petitioners' expectations, the court of appeals followed *74 Pinehurst*, which explained that the RSL provisions at issue have been in place in similar form for decades. (Pet. App. 11 (citing *74 Pinehurst*, 59 F.4th at 567-68).)

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 this Court has rejected regulatory takings challenges based on diminutions in value of 75% to nearly 90%. *See Penn Central*, 438 U.S. at 131.

Petitioners do not dispute the court of appeals' finding that all but one petitioner failed to allege "the specific economic impact of the [RSL] on their buildings." (*See* Pet. App. 11.) And the remaining petitioner (FGP 303 LLC) alleged only that the value of its property decreased 34% following the HSTPA's enactment in 2019. (CA2 App. 17-18.) These allegations fall far short of pleading a regulatory taking as applied to petitioners. *See, e.g.*, *Concrete Pipe*, 508 U.S. at 645 (alleged diminution of 46% not indicative of taking). Nor do petitioners attempt to establish that the RSL on its face imposes economic harms on all landlords that are sufficiently severe to constitute a regulatory taking.

While petitioners complain that "[n]o court seems to know how much economic harm the government must cause to weigh in favor of finding a taking" (Pet. 33), they cite no authority suggesting that the economic

injuries they allege suffice. Instead, petitioners wonder "why the economic effect of a regulation should even be considered on the front-end analysis of whether a taking has occurred." (Pet. 33.) But this Court has already answered that question: to measure "the severity of the burden that government imposes upon private property rights" in cases where there is no government-forced occupation of property. *See Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 539 (2005).

3. Finally, petitioners fail to 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.'" *Id.* at 538 (quoting *Penn Central*, 438 U.S. at 124).

As explained (at 16-22), the RSL does not effect or approximate a physical invasion of property. And the court of appeals correctly found that the RSL "is part of a broader regulatory regime" which the Legislature has determined "is necessary to prevent 'serious threats to the public health, safety, and general welfare.'" (*See* Pet. App. 12 (quoting *74 Pinehurst*, 59 F.4th at 568 (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 criticize the court of appeals' supposed "overreliance" on the law's purpose (Pet. 32). The court of appeals did not "wholly ignore[] the physical character of the RSL," as petitioners claim (Pet. 31). Rather, it rejected petitioners' argument that the RSL is the "functional equivalent of a practical ouster" (Pet. 32 (quotation marks omitted)) when it held

that petitioners voluntarily invited tenants to occupy their property and retain substantial rights to exclude them (*see* Pet. App. 5, 7).

Justice Scalia's dissenting opinion in *Pennell v. City of San Jose*, 485 U.S. 1 (1988), does not support petitioners. The ordinance challenged in *Pennell* allowed for tenant-by-tenant rent reductions based on individual hardship, *id.* 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. Having failed to allege a regulatory taking under *Penn Central*, petitioners contend that the doctrine needs "clarification." (Pet. 30.) But petitioners do not explain what "clarification" they envision; they merely disagree with the court of appeals' application of settled law to the facts of this case. Petitioners' disagreement with the result below is not a reason to grant certiorari. *See* Sup. Ct. R. 10.

III. PETITIONERS' CONFISCATORY TAKINGS CLAIM DOES NOT WARRANT THIS COURT'S REVIEW.

Where a privately owned utility company is "under a state statutory duty to serve the public," the Takings Clause "protects utilities from being limited to a charge for their property serving the public which is so 'unjust' as to be confiscatory." *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 307 (1989). This rule, which petitioners refer to as the "confiscatory takings doctrine" (Pet. 22-30), arises in the unique context of the "partly public, partly private status of utility property," *Duquesne Light Co.*, 488 U.S. at 307 (electricity); *see Verizon Commc'ns, Inc. v. FCC*, 535 U.S. 467 (2002) (telephone); *Federal Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591 (1944) (gas).

This case is a poor vehicle to address whether the confiscatory takings doctrine extends beyond public utilities to rent regulation because petitioners' claims are unripe. In any event, there is no basis to extend the doctrine to rent regulation, and petitioners fail to state a claim on the merits.

1. Even if the confiscatory takings doctrine were applicable, petitioners' claim would be unripe for the same reason as their regulatory takings claims: petitioners did not seek hardship exemptions to charge higher rents. See *supra* at 24-25. Determining whether a particular rate is unjust or unreasonable is a fact-intensive inquiry that considers the "net effect of the rate order" on the owner's property. *See Duquesne Light Co.*, 488 U.S. at 314. The RSL's "net effect" on petitioners cannot be determined without knowing the extent to which existing statutory mechanisms would offset petitioners' alleged inability to collect adequate rents.

Cf. Verizon Commc'ns, 535 U.S. at 524 (no confiscatory taking in the absence of "any rate to be reviewed").

2. In any event, this Court has never applied the confiscatory takings doctrine to rent regulation and in fact distinguished rent regulation from public-utility regulation in *Bowles v. Willingham*, 321 U.S. 503 (1944). In *Bowles*, the Court explained that it was not "dealing . . . with a situation which involves a 'taking' of property" because the rent-control statute at issue did not require "any person to sell any commodity or to offer any accommodations for rent." *Id.* (quotation marks omitted). Since *Bowles*, this Court has confirmed that, when States "regulate housing conditions in general and the landlord-tenant relationship in particular," challenges to such regulations are properly analyzed under *Penn Central*. *See Loretto*, 458 U.S. at 440.

The court of appeals correctly concluded that this case presents no basis to "expand" the confiscatory takings doctrine. (Pet. App. 12.) As in *Bowles*, the RSL does not compel landlords to "engage in price-regulated activity" comparable to the comprehensive state oversight and operation of public utilities. *See, e.g.*, *Garelick v. Sullivan*, 987 F.2d 913, 916 (2d Cir. 1993).

Below, petitioners "cite[d] no case that has ever applied the confiscatory taking doctrine in the landlord-tenant context." (Pet. App. 12.) And the cases petitioners invoke now for the first time do not advance their argument.

At the outset, petitioners misread *Block v. Hirsh*, 256 U.S. 135 (1921), which involved a constitutional challenge to a rent-control statute that limited evictions and capped rents. (*See* Pet. 24.) In *Block*, the plaintiff landlord sued to recover possession of the premises; he did not challenge any rent restriction as confiscatory.

256 U.S. at 153. Although this Court, in rejecting the challenge, observed that the statute allowed the landlord to collect "a reasonable rent," *id.* at 157, the Court did not engage in any rate-setting analysis. Instead, the Court's observation regarding the economic impact of the regulation would foreshadow its consideration of that factor in modern regulatory takings cases. On multiple occasions, this Court has cited *Block* in discussing the types of regulations appropriately analyzed under the regulatory takings framework. *See Loretto*, 458 U.S. at 440; *Florida Power Corp.*, 480 U.S. at 252.

Petitioners' state-court cases are also inapposite because they involved challenges brought under state law, or under both state and federal law, and do not turn on any interpretation of the federal Takings Clause. *See Kennedy v. City of Seattle*, 94 Wash. 2d 376, 381-83 (1980) (state law); *Jeffrey v. McCullough*, 97 Wash. 2d 893, 897-99 (1982) (state and federal law); *Birkenfeld v. City of Berkeley*, 17 Cal. 3d 129, 140, 165 (1976) (framing question as whether regulation was "within the police power" as defined by state Constitution); *Hutton Park Gardens v. Town Council*, 68 N.J. 543, 568 n.9 (1975) (declining to follow *Bowles*). By contrast, petitioners identify no federal cases analyzing a rent regulation as a confiscatory taking.

3. In any event, petitioners do not plausibly allege a confiscatory taking on the merits. As explained above (at 16-20), petitioners have not shown that the RSL compels them to provide a public service; instead, they voluntarily rent their property and knowingly entered New York City's highly regulated rental-housing market. Their claim fails for these reasons alone.

In addition, petitioners do not attempt to explain how the "total effect" of the RSL's rent regulations is

"unreasonable." *See Duquesne Light Co.*, 488 U.S. at 310-11. Instead, petitioners rely on generalized allegations that costs have sometimes outpaced rent increases and that they could charge higher rents in an unregulated market. (Pet. 29-30.) But these allegations are deficient under petitioners' own authority, which explains that just and reasonable rates "need not be as high as prevailed in the industry prior to regulation" and rent restrictions are not confiscatory merely because costs outpace allowable rent increases. *See Hutton Park Gardens*, 68 N.J. at 570-71.

CONCLUSION

The petition for a writ of certiorari should be denied.

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August 2023

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