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 OF RESPONDENTS N.Y. TENANTS AND NEIGHBORS AND COMMUNITY VOICES HEARD

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QUESTIONS PRESENTED

This case involves facial and as-applied challenges, under the Takings Clause, to the validity of New York's Rent Stabilization Law of 1969, the Emergency Tenant Protection Act of 1974, and their attendant codes, rules, and regulations (together, the "RSL"). The questions presented are:

1. Whether the United States Court of Appeals for the Second Circuit correctly held that Petitioners failed to adequately allege that the provisions of the RSL circumscribing the permissible grounds for evicting rent-stabilized tenants or refusing to renew their leases, facially or as applied to Petitioners' properties, effect *per se* physical takings because the RSL neither compels an owner to offer its property for rent nor prohibits a landlord in perpetuity from terminating a tenancy.

2. Whether the Second Circuit correctly held that the doctrine of confiscatory takings does not apply to Petitioners' claims because the RSL does not compel landlords to partake in or stay in the residential rental market.

3. Whether the standard for a regulatory taking set forth in *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978), should be refashioned.

CORPORATE DISCLOSURE STATEMENT

Respondents N.Y. Tenants and Neighbors and Community Voices Heard have no parent corporation, and no publicly held corporation owns 10% or more of the stock of any of these entities.

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INTRODUCTION

Petitioners are four corporate entities that own multi-unit apartment buildings in New York City as investment properties. Petitioners seek this Court's review of a summary order by a unanimous Second Circuit panel affirming the district court's dismissal of claims that New York's Rent Stabilization Law of 1969, the Emergency Tenant Protection Act of 1974, and their attendant regulations (together, the "RSL"), as amended by the Housing Stability and Tenant Protection Act of 2019 (the "HSTPA"), effect, facially and as applied, unconstitutional physical and regulatory takings.[1]

The RSL, which applies to nearly one million apartments in New York City alone, has regulated rents and evictions across the state for *fifty years* and has repeatedly withstood takings challenges, as noted by the Second Circuit.[2] The unanimous Second

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[1] Respondents N.Y. Tenants and Neighbors and Community Voices Heard are non-profit tenant advocacy organizations that intervened below in defense of the RSL.

[2] See, e.g., *Cmty. Hous. Improvement Program v. City of New York*, 59 F.4th 540 (2d Cir. 2023), *petition for cert. filed*, No. 22-1095 (May 8, 2023); *74 Pinehurst LLC v. New York*, 59 F.4th 557 (2d Cir. 2023), *petition for cert. filed*, No. 22-1130; *Harmon v. Markus*, 412 F. App'x 420 (2d Cir. 2011); *W. 95 Hous. Corp. v.*

Circuit's faithful application of clear precedent in this case is the latest in this long line of decisions upholding the RSL.

Because there is no conflict among the circuits regarding the applicable standard for analyzing challenges to rent regulations under the Takings Clause, the unanimous decision below is fully consistent with this Court's Takings Clause jurisprudence, and this case is a poor vehicle for addressing the parameters of the Takings Clause, the Petition should be denied.

STATEMENT OF THE CASE

A. The Long History of Rent and Eviction Regulations in New York

For over a century, New Yorkers have benefited from federal, state, and local regulation of rents and evictions. This Court and others have repeatedly

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N.Y.C. Dep't of Hous. Pres. & Dev., 31 F. App'x 19 (2d Cir. 2002); *Fed. Home Loan Mortg. Corp. v. N.Y. State Div. of Hous. & Cmty. Renewal*, 83 F.3d 45 (2d Cir. 1996); *Rent Stabilization Ass'n of City of N.Y., Inc. v. Dinkins*, 5 F.3d 591 (2d Cir. 1993); *Greystone Hotel Co. v. City of New York*, 13 F. Supp. 2d 524 (S.D.N.Y. 1998), *aff'd*, 1999 U.S. App. LEXIS 14960 (2d Cir. June 23, 1999) (summary order); *Silberman v. Biderman*, 735 F. Supp. 1138 (E.D.N.Y. 1990); *Tonwal Realties, Inc. v. Beame*, 406 F. Supp. 363 (S.D.N.Y. 1976); *Somerset-Wilshire Apartments, Inc. v. Lindsay*, 304 F. Supp. 273 (S.D.N.Y. 1969).

upheld those protections. Petitioners treat these regulations as though they were a single statute whose provisions may be evaluated in one swoop, but the reality is far more complex.

In 1920, in response to severe housing shortages and rent shocks caused by World War I, the New York state legislature enacted the first rent-regulation laws for New York City. *Cmty. Hous.*, 59 F.4th at 544.[3] The laws—which for ten years capped rent increases and prevented evictions without cause—were "the subject of ongoing litigation." *Id.* This Court and the New York Court of Appeals repeatedly upheld their constitutionality.[4]

During and after World War II, tenancies in the New York City area were regulated by federal law: first the Emergency Price Control Act of 1942, and later the Housing and Rent Act of 1947. *Id.* at 545; see

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[3] In its decision below, the Second Circuit wrote "primarily for the parties," "assume[d] a familiarity with the facts," and referred to its *Community Housing* opinion for "[a] history of New York City's rent control policies." Pet. App. 4 & n.1. *Community Housing* is the subject of the pending petition for a writ of certiorari in case number 22-1095.

[4] See *Edgar A. Levy Leasing Co. v. Siegel*, 258 U.S. 242, 249–49 (1922); *Marcus Brown Holding Co. v. Feldman*, 256 U.S. 170, 198 (1921); *People ex rel. Durham Realty Corp. v. La Fetra*, 230 N.Y. 429, 444–46, *writ of error dismissed*, 257 U.S. 665 (1921).

also Pet. App. 15. This Court upheld both statutes (and their attendant rent and eviction regulations) against Takings Clause challenges.[5]

In 1950, authority to regulate residential rents in New York passed to the Temporary State Housing Rent Commission, *Cmty. Hous.*, 59 F.4th at 545, whose regulations likewise were repeatedly upheld against constitutional attack.[6]

Pursuant to a 1962 statute delegating rent-regulation authority to large cities, 23 N.Y. Unconsol. Laws § 8605, the New York City Council enacted the Rent Stabilization Law of 1969 (the "1969 RSL"), see Pet. App. 16. The 1969 RSL initially applied to buildings with six or more units constructed between 1947 and 1969 and established New York City's Rent Guidelines Board to regulate annual rent increases for rent-stabilized apartments. Pet. App. 16–17, 20. The 1969 RSL's regulations set the permissible grounds for evicting, or declining to renew the leases of, rent-stabilized tenants. See Pet. App. 21–22; *The New York Rent Stabilization Law of 1969*, 70 Colum. L. Rev. 156,

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[5] See *Woods v. Cloyd W. Miller Co.*, 333 U.S. 138, 146 (1948); *Bowles v. Willingham*, 321 U.S. 503, 517 (1944).

[6] See *I.L.F.Y. Co. v. Temp. State Hous. Rent Comm'n*, 10 N.Y.2d 263, 268 (1961), *appeal dismissed*, 369 U.S. 795 (1962); *Teeval Co. v. Stern*, 301 N.Y. 346, 362, *cert. denied*, 340 U.S. 876 (1950).

173–74 (1970). One basis for eviction was the conversion of a rent-stabilized building to cooperative ownership, which requires approval by the Attorney General and, in the 1970s, required the subscription of 35 percent of tenants. See *Richards v. Kaskel*, 32 N.Y.2d 524, 530 (1973). Multiple courts upheld the 1969 RSL's constitutionality.[7]

In a 1971 effort to spur housing construction and renovation, the state legislature enacted statutes requiring the deregulation of apartments upon vacancy, prohibiting New York City from subsequently regulating such apartments, and permitting owners of newly constructed buildings to opt into rent stabilization in exchange for a tax abatement. Pet. App. 17; see generally *Hewlett Assocs. v. City of New York*, 57 N.Y.2d 356, 360 (1982); *La Guardia v. Cavanaugh*, 53 N.Y.2d 67, 73 (1981). The hoped-for construction and renovation did not materialize, however, and the state enacted the Emergency Tenant Protection Act of 1974 ("ETPA"), which permitted New York City to expand, and surrounding municipalities to adopt, rent stabilization for buildings with six or more units constructed before 1974 that were not already regulated. Pet. App. 18; see generally *La Guardia*, 53 N.Y.2d at 74. The ETPA may apply only in municipalities experiencing

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[7] See *8200 Realty Corp. v. Lindsay*, 27 N.Y.2d 124, 129 (1970); *Somerset-Wilshire Apartments*, 304 F. Supp. at 274.

a housing emergency, as declared by the local legislative body. See Pet. App. 37; *La Guardia*, 53 N.Y.2d at 75. The ETPA "nullified and terminated" the 1971 "experiment" in vacancy-based deregulation. *520 E. 81st St. Assocs. v. Lenox Hill Hosp.*, 38 N.Y.2d 525, 528 (1976); see also Pet. App. 17–18.

In the 1980s, the state legislature designated the Division of Housing and Community Renewal ("DHCR") as the sole agency authorized to administer the RSL, and DHCR issued regulations extending the RSL's non-eviction protections to certain family members and close associates of a tenant of record who resided with the tenant of record in a regulated apartment. See *Rent Stabilization Ass'n of N.Y.C., Inc. v. Higgins*, 83 N.Y.2d 156, 165 (1993). The New York Court of Appeals squarely rejected the argument that these successorship regulations created perpetual tenancies or otherwise effected unconstitutional physical or regulatory takings. *Id.* at 171–75. This Court denied certiorari. 512 U.S. 1213 (1994).

The Second Circuit also rejected the argument that the RSL's rent restrictions effected unconstitutional takings by purportedly depriving some landlords of reasonable returns. See *Rent Stabilization Ass'n of City of N.Y., Inc. v. Dinkins*, 5 F.3d 591, 594–95 (2d Cir. 1993).

In 1993, the state legislature amended the RSL to permit, for the first time in twenty years, the deregulation of high-rent apartments that either became vacant or housed high-income tenants. See Pet. App. 14a; *Roberts v. Tishman Speyer Props. L.P.*, 13 N.Y.3d 270, 280–81 (2009). These deregulatory mechanisms remained in place until 2019.

The Housing Stability and Tenant Protection Act of 2019 ("HSTPA") was enacted on June 14, 2019, in response to the housing crisis that the state legislature found continues to exist in New York. See Pet. App. 20; *Cmty. Hous.*, 59 F.4th at 545–46. The HSTPA amended various provisions of the RSL and other laws affecting the landlord-tenant relationship. Among other changes, the HSTPA revised the amounts of permissible rent increases based on apartment or building improvements, repealed the statutory mechanisms for deregulating high-rent apartments upon vacancy or based on tenants' income, repealed statutory bases for increasing rents upon vacancy, and restricted landlords' ability to evict tenants or refuse renewal of leases to recover apartments for the landlord's personal use. Pet. App. 20. The HSTPA also permits municipalities statewide that are experiencing a housing emergency to opt into the RSL's protections. See 2019 N.Y. Laws ch. 36, part G.

B. The Reach of the RSL

The RSL protects tenants in nearly one million apartments in New York City, or about half the city's rental housing stock. See Pet. App. 17, 44. One-fifth of these apartments house families living below the poverty line, and nearly two-thirds house families classified by the Department of Housing and Urban Development as low-income, very low-income, or extremely low-income. *Cmty. Hous.*, 59 F.4th at 546. In recent years, approximately 175,000 households in rent stabilized housing were unable to afford even a $25 increase in their monthly rent. *Id.* at 547 n.21.

In general, the RSL applies only to buildings constructed before 1974 that have six or more apartments, and only in municipalities whose local legislative bodies have declared, after public hearing, a housing emergency for a housing class with a vacancy rate of 5% or less.[8] See N.Y.C. Admin. Code § 26-504(b); 23 N.Y. Unconsol. Laws §§ 8623, 8625. The New York City Council last declared such an emergency in 2022. See N.Y.C. Admin. Code §§ 26-501, 26-502. Absent

[8] The RSL also applies to certain New York City apartments in buildings of six or more units constructed between 1947 and 1969 notwithstanding a declaration of emergency, see N.Y.C. Admin. Code § 26-504(a)(1), and to apartments in buildings receiving certain tax benefits, see *id.* § 26-504(c); N.Y. Real. Prop. Tax Law § 421-a; Pet. App. 17.

further legislative action, that emergency declaration will expire on April 1, 2024. *Id.* § 26-520. In addition, the emergency "must be declared at an end once the vacancy rate … exceeds five percent." 23 N.Y. Unconsol. Laws § 8623.

The RSL has established a Rent Guidelines Board ("RGB") for New York City.[9] Pet. App. 20. The RGB comprises members representing the interests of landlords, tenants, and the general public and is charged with determining the amount of permissible rent increases for rent-stabilized renewal leases. *Cmty. Hous.*, 59 F.4th at 545 (citing N.Y.C. Admin. Code § 26-510(a)). The RSL requires the RGB, when making its decision, to consider multiple factors: the economic condition of the housing market, certain costs for which landlords were responsible, the returns generated to landlords, the housing supply, and the cost of living. *Id.* (citing N.Y.C. Admin. Code § 26-510(b)).

[9] The RSL also provides for the creation of an RGB for each county outside of New York City in which a municipality has opted into the RSL's protections by determining the existence of a housing emergency. See 23 N.Y. Unconsol. Laws § 8624(a).

Consistent with the RSL, a landlord generally may charge rents up to the RGB-set maximum,[10] may raise rents due to improvements, may apply for hardship exemptions if the landlord is unable to maintain a consistent average rental income or if the gross rental income does not exceed the landlord's annual operating expenses by at least five percent of the gross rent, and must grant tenants and their lawful successors the opportunity to renew their leases, subject to exceptions described below. See N.Y.C. Admin. Code § 26-511(c); 23 N.Y. Unconsol. Laws §§ 8626(d), 8630(a)-(b).

The RSL does not require any landlord to offer vacant apartments for rent and does not prohibit any landlord from terminating a tenancy through statutorily permitted means. Landlords may perform background checks on prospective tenants, N.Y. Real Prop. Law § 238-a(1)(b), and evict unsatisfactory tenants for unsatisfactory behavior, 9 N.Y.C.R.R. § 2524.3. Without the approval of DHCR, a landlord who is a natural person may recover an apartment for the personal use of the landlord or her immediate family upon a showing of immediate and compelling necessity. N.Y.C.

[10] Since the enactment of the HSTPA, when a landlord offers an apartment for a "preferential rent" that is lower than the RGB-set maximum, such preferential rent becomes the baseline for future RGB-permitted rent increases until that tenant vacates the unit. See generally *Burrows v. 75-25 153rd St., LLC*, 215 A.D.3d 105, 111 & n.5 (1st Dep't 2023).

Admin. Code § 26-511(c)(9)(b); 23 N.Y. Unconsol. Laws § 8630(a). Any landlord may, with DHCR approval and on the condition of paying relocation expenses, decline to renew a lease to withdraw a building from the rental market for business use, rehabilitation, demolition, or gut renovation. See 9 N.Y.C.R.R. § 2524.5; *Peckham v. Calogero*, 54 A.D.3d 27, 31–32 (1st Dep't 2009) (explaining that gut renovation satisfies the RSL's demolition option).

The RSL does not prevent an owner from selling a regulated building. Although there are other non-RSL provisions of New York law restricting the conversion of residential buildings to cooperative or condominium ownership, see N.Y. Gen. Bus. Law §§ 352-eeee (New York City), 352-eee (surrounding counties), these provisions apply to all such conversions and are not limited to rent-stabilized buildings. They derive from broader anti-fraud restrictions on real-estate syndication offerings. See *id.* § 352-e.

C. District Court Proceedings

On February 6, 2020, Petitioners filed suit in the Southern District of New York, asserting five claims under 42 U.S.C. § 1983: **(1)** that the RSL, as amended by the HSTPA, effects a *per se* physical taking on its face and as applied to Petitioners' properties, **(2)** that the RSL effects a regulatory taking on its face and as applied to Petitioners' properties, **(3)** that the RSL

effects a "confiscatory taking" of Petitioners' properties, **(4)** that the RSL effects takings for non-public use, and **(5)** that the RSL violates due process. Compl. ¶¶ 264–99, S.D.N.Y. No. 20-cv-01053, ECF No. 1.[11] Among other remedies, Petitioners sought the nullification of the RSL in its entirety, including its enabling statutes and every statute and regulation it comprises. *Id.* at 106–09.[12]

The district court on March 8, 2021, granted Respondents' motions to dismiss all of Petitioners' claims. See Pet. App. 54–55.

First, the district court held that the RSL does not on its face effect a *per se* physical taking of regulated properties. *Id.* at 32–37. The court reasoned that, "because landlords have voluntarily offered their property for rent and, by the express terms of the RSL, landlords can evict unsatisfactory tenants, reclaim or

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[11] The Appendix filed by Petitioners does not contain the underlying complaint.

[12] After Respondents moved to dismiss the Complaint, Petitioners abandoned their due process claim, which was based on the HSTPA's changes to the rules governing rent-overcharge proceedings, based on an intervening decision by the New York Court of Appeals. See Pet. App. 23 n.2; Compl. ¶¶ 3, 8, 294–99. One Petitioner subsequently prevailed in a rent-overcharge proceeding. *699 Venture Corp. v. Zuniga*, 133 N.Y.S.3d 191 (Civ. Ct. 2020).

convert units, or exit the market," Petitioners' facial physical-taking challenge could not prevail. *Id.* at 33. The court rejected Petitioners' argument that the RSL's exit options are too difficult because no Petitioner alleged that it had attempted to do so, and the court disagreed with Petitioners' claim that the RSL is permanent because the RSL expressly requires the New York City Council to reevaluate the existence of a housing emergency every three years. *Id.* at 36–37.

Second, the district court held that Petitioners' "sparse allegations supporting their as-applied physical taking challenges" failed to state a claim. *Id.* at 37.

Third, the district court held that Petitioners' regulatory takings claims were governed by the *Penn Central* standard, not the *per se* test of *Lucas v. S.C. Coastal Council*, 505 U.S. 1003 (1992), or the "land-use exaction" standard set forth in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987). Pet. App. 40–41. The court further held that Petitioners failed to adequately allege any of the *Penn Central* factors on a facial basis, failed to ripen their as-applied claims by seeking available hardship exemptions from the RSL's rent limits, and in any event failed to adequately allege any of the *Penn Central* factors as applied to them. See Pet. App. 42–50.

Fourth, the district court held that Petitioners could not prevail on their claims for confiscatory

takings because "[t]he confiscatory taking analysis arises in the context of private companies statutorily required to provide public utilities," and [l]andlords of rent-stabilized apartments are [neither] public utility companies" nor "compelled to enter, or remain, in the rent-stabilization market." *Id.* at 50.

Fifth, the district court held that Petitioners could not prevail on their non-public use claim because they failed to state any takings claims. *Id.* at 51. The court further held, in any event, that the RSL satisfies the standard for public uses under this Court's precedents. *Id.* at 51–52.

The district court denied leave to amend "because amendment would be futile" and entered judgment dismissing Petitioners' claims. *Id.* at 53–55.

D. Second Circuit Proceedings and the Instant Petition

Petitioners appealed, and the Second Circuit affirmed in a summary order. Pet. App. 1–13.

First, the court of appeals reiterated its holding from *Community Housing* that *Salerno* provides the governing "no set of circumstances" standard for a facial claim, and the court rejected as meritless Petitioners' argument that this Court subsequently "relaxed

the *Salerno* standard." *Id.* at 4 n.2 (citing *Cmty. Hous.*, 59 F.4th at 548).

Second, the court of appeals held, pursuant to *Community Housing*, that Petitioners failed to adequately allege that the RSL effects a physical or regulatory taking in all of its applications. *Id.* at 5–6.

Third, the court of appeals held, as it had in *74 Pinehurst* and following this Court's decision in *Yee v. City of Escondido*, 503 U.S. 519 (1992), that Petitioners failed to adequately allege that the RSL effects physical takings as applied to their properties. Pet. App. 6–7. The court reasoned that the RSL preserves possible grounds for eviction and non-renewal, the Takings Clause does not protect Petitioners' desire to choose the identities of their incoming tenants, and Petitioners' failure to attempt to use available exit options made it impossible to assess their as-applied claims. *Id.* at 7–8.

Fourth, the court of appeals held, as it had in *74 Pinehurst*, that Petitioners' failure to seek available hardship exemptions from the RSL's rent limits rendered their as-applied regulatory takings claims unripe. *Id.* at 8–9. The court rejected Petitioners' argument that FGP 309 LLC's choice to sell its building without applying for a hardship exemption exempted it from the ripeness requirement. *Id.* at 9–10. The court also rejected Petitioners' argument that

applying for hardship exemptions would be futile. *Id.* at 10. The court further held that, even on the merits, Petitioners failed to plausibly allege as-applied regulatory takings because each of the *Penn Central* factors weighed against them. *Id.* at 10–12.

Fifth, the court of appeals held that Petitioners failed to plead confiscatory takings because "they cite[d] no case that has ever applied the confiscatory taking doctrine in the landlord-tenant context," and the court "decline[d] to expand the doctrine here." *Id.* at 12.

Sixth, the court of appeals held that, because "the RSL has not effected a taking, it could not have effected a taking for a non-public use." *Id.*

Petitioners seek this Court's review of the dismissal of their claims for physical, regulatory, and confiscatory takings. See Pet. i. Petitioners do not seek review as to their claim that the RSL takes property for non-public use. See *id.*

REASONS FOR DENYING THE PETITION

Petitioners argue that the RSL effects a physical taking by regulating the permissible grounds on which landlords may evict rent-stabilized tenants and decline to renew their leases. Because Petitioners cannot point to any actual conflict among the circuits,

they instead seek review of the Second Circuit's application of this Court's "right to exclude" jurisprudence. The Second Circuit's application of existing precedent to this complex municipal scheme was correct, however, and does not present a cert-worthy issue.

Petitioners also argue that this Court's jurisprudence regarding "confiscatory" takings, which applies to rate-setting for public utilities, should be extended to apply to landlord-tenant regulations. Because they cannot point to any other circuit or state high court that has done so, and because the Second Circuit correctly held that the doctrine has no bearing on this dispute, the issue does not warrant review.

And Petitioners argue that the multi-factor standard set forth in *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978)—which this Court has consistently applied to claims of non-categorical takings, including in the landlord-tenant context, and has otherwise reaffirmed for decades—should be abandoned. There is no good reason to do so.

Moreover, this case is a particularly bad vehicle to address any Takings Clause questions purportedly raised by the RSL. Petitioners fail to identify which provisions of the RSL are implicated by their claims and seek overbroad relief invalidating New York's entire rent-stabilization scheme, despite not identifying a concrete and particularized injury fairly traceable to

any aspect of that scheme. Their facial challenge conflates several statutes and fails to establish that there is no circumstance under which any of those statutes would be valid, and their as-applied challenges are unripe. Petitioners' effort to invalidate a municipal regulation that has evolved—at times in favor of landlords and at times in favor of tenants—in response to more than a century of changing local economic conditions should be rejected.

I. The Second Circuit's Physical-Takings Analysis Does Not Warrant Review

A. The Decision Below Does Not Conflict with Any Other Circuits

For their physical takings claim, Petitioners try to manufacture a split with only one other circuit. They argue that "[t]he Eighth Circuit in *Heights Apartments, LLC v. Walz*, 30 F.4th 720 (8th Cir. 2022), split sharply with the Second Circuit's approach in this case," and, "had this case been litigated in the Eighth Circuit, Petitioners' physical takings claim would have been allowed to proceed." Pet. 19–20. Petitioners are wrong.

Although the Eighth Circuit in *Heights* upheld a physical takings claim, the different outcomes do not reflect the existence of a conflict among the circuits, but rather the vast differences between the statutes

at issue. *Heights* concerned a COVID-19 eviction moratorium banning virtually all evictions—including for rent non-payment or other material lease breaches. *Heights*, 30 F.4th at 725. The Eighth Circuit thus held that the state engaged in a physical taking by "forc[ing] landlords to accept the physical occupation of their property regardless of whether tenants provided compensation." *Id.* at 733.

The RSL imposes no such requirement. Under the RSL, a landlord may evict a tenant who does not pay rent, violates the lease, commits a nuisance, or uses the apartment for unlawful purposes. 9 N.Y.C.R.R. § 2524.3. A landlord may also **(1)** decline to renew a lease if the owner or an immediate family member has an immediate and compelling need to occupy the apartment, N.Y.C. Admin. Code § 26-511(c)(9)(b); **(2)** withdraw an apartment from the rental market for "use in connection with a business which he or she owns and operates," 9 N.Y.C.R.R. § 2524.5(a)(1)(i); **(3)** decline to renew a lease if the apartment is not the tenant's primary residence, *id.* § 2524.4(c); **(4)** demolish or gut renovate a building (with payment of relocation expenses), *id.* § 2524.5(a)(2), (3); *Peckham*, 54 A.D.3d at 31–32; **(5)** withdraw a building from the rental market because of a safety hazard that would cost more than the building's worth to repair, 9 N.Y.C.R.R. § 2524.5(a)(1)(ii); **(6)** convert (through sale) rental apartment buildings to condominiums or

cooperatives with purchase agreements from at least fifty-one percent of tenants, HSTPA Part N (codified at N.Y. Gen. Bus. L. § 352-eeee); or **(7)** elect not to offer a regulated apartment for rent upon vacancy.

Thus, nothing in the decision below conflicts with the Eighth Circuit's ruling that the state may not force a landlord to permit a tenant to occupy a space rent-free or after a tenant has materially violated the terms of their lease. The Eight Circuit concluded the law at issue in *Heights* went far beyond the bounds permitted by this Court's precedent. The RSL does not. There is, therefore, no conflict among the circuits, much less a conflict justifying review.

B. The Decision Below Is Correct

"The government effects a physical taking only where it *requires* the landowner to submit to the physical occupation of his land." *Yee v. City of Escondido*, 503 U.S. 519, 527 (1992) (emphasis in original). No landlord is compelled by the RSL to offer a vacant unit for rent.[13] Petitioners cannot, and do not, contest that

[13] Petitioners argue, in fact, that numerous landlords are leaving their units vacant instead of renting to tenants. Pet. 35. But as reports have found, long-term vacancy rates have not changed in recent years. See David Brand, *Empty Rent-Stabilized Units in NYC Decreased This Year, as 'Warehousing' Debate Rages*, City Limits (Nov. 17, 2022), http://bit.ly/47yOjY8.

all regulated landlords voluntarily invited tenants onto their properties in the first place. Nor does any Petitioner claim that they want to stop inviting tenants to occupy their properties. Rather, as the Second Circuit observed, Petitioners' complaint is that "after 'an eviction, the tenant is just replaced with another rent-stabilized tenant at the same rent.'" Pet. App. 7. But this Court unequivocally held in *Yee* that "[w]hen a landowner decides to rent his land to tenants, the government may … require the landowner to accept tenants he does not like without automatically having to pay compensation." 503 U.S. at 529 (citation omitted). The Second Circuit correctly applied this Court's precedent, stating that "limitations on the ability of Landlords to decide who their incoming tenants are has nothing to do with whether a law or regulation causes a physical taking." Pet. App. 7 (cleaned up).

Although Petitioners argue (at 20) that, "[u]nder the RSL, tenants have been awarded the right to determine when and whether they will leave; the landlord no longer can decide to exclude them," that is not true. On the face of the RSL, landlords may refuse to renew a lease for numerous reasons, including to reclaim a unit for personal use or the use of their family, to change the use of the building from rental to another commercial purpose for the landlord, to demolish, gut, or renovate the property—at which point the landlord can even build new, unregulated

apartments—to remove the property from the rental market if there is a safety hazard that would cost more than the building is worth to repair, and to remove a tenant who has breached his or her lease. See *supra* pp. 7–10, 17.

Petitioners admit (at 8–11) there are options allowing them to end tenancies.[14] They say the RSL "*generally* forbids Petitioners from refusing to renew leases," meaning that in some cases it does not forbid refusing to renew leases. Pet. 2 (emphasis added). They argue only that these options are not "feasible." *Id.* But the Supreme Court already rejected that argument in *Yee*. There, the landlords argued that changing the use of their property "was in practice a kind of gauntlet," but the Court held that the difficulty of running such a gauntlet was of "no occasion" to the case "[b]ecause petitioners d[id] not claim to have run that gauntlet." *Yee*, 503 U.S. at 528 (internal quotation marks omitted). So too here. No Petitioner has alleged that it

[14] Petitioners wrongly state that the RSL prohibits them from recovering units for commercial uses like "retail use" or "office space." Pet. 9. To the contrary, Petitioners "shall not be required to offer a renewal lease" if they "require[] all or part of the housing accommodations or the land for his or her own use in connection with a business which he or she owns and operates" and do not intend to rent the property. 9 N.Y.C.R.R. § 2524.5(a)(1)(i).

wants to stop renting its property, much less that it has actually tried to do so and could not.[15]

Petitioners cite *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), for the proposition that the RSL's eviction restrictions are equivalent to "laying a half-inch cable across an apartment building's roof," Pet. 20, but *Loretto* expressly reaffirmed this Court's repeated admonition "that States have 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," 458 U.S. at 440. And unlike the law that was challenged in *Loretto*, the RSL does not in any way affect "[t]he fact of ownership" by landlords over regulated buildings. *Id.* at 440 n.19. Finally, the cable in *Loretto* was not invited by the building owners; here, every landlord, including Petitioners, invited tenants to occupy their properties. "[I]t is

[15] Petitioners rely on the dissenting opinion in *Fresh Pond Shopping Center v. Callahan*, 464 U.S. 875, 878 (1983) (Rehnquist, J., dissenting), to argue that the RSL effects a physical taking by "effectively transfer[ring] [a] reversionary interest from Petitioners to their tenants." Pet. 21. Even if that dissent were law (it is not), the RSL contains numerous options for landlords to possess and use their properties after the expiration of any particular lease, and in all cases, all property interests revert to the owner.

the invitation … that makes the difference." *FCC v. Fla. Power Corp.*, 480 U.S. 245, 252 (1987).

Finally, Petitioners contend that the Second Circuit "stretch[ed]" this Court's decision in *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063 (2021), "beyond recognition." Pet. 21. The Second Circuit did no such thing. Rather, it correctly distinguished *Cedar Point*. It observed that "unlike in Cedar Point, where the property at issue was closed to the public," Petitioners "voluntarily invited third parties to use their properties, and as the Court explained in *Cedar Point*, regulations concerning such properties are readily distinguishable from those compelling invasions of properties closed to the public." Pet. App. 5 (cleaned up). Petitioners contend that "apartment buildings and the individual units are not generally open to the public" because they do not "welcom[e] some 25,000 patrons a day" like "a shopping mall." Pet. 21 (cleaned up). That is both wrong—when any landlord decides to rent property, that property is open to members of the public to rent and occupy as tenants[16]—and misses the

[16] A tenant has "the sole and exclusive right to undisturbed possession," *Camatron Sewing Mach., Inc. v. F.M. Ring Assocs, Inc.*, 179 A.D.2d 165, 168 (1st Dep't 1992), and a landlord has "no right to enter upon the demised premises, and take possession, to the exclusion of the tenant," *Smith v. Kerr*, 108 N.Y. 31, 34–35 (1888). Tenants are also entitled to invite additional members of the public to live with or visit them. See N.Y. Real Prop. Law

point. Again, "it is the invitation," not the number of people that access the property, "that makes the difference." *Fla. Power*, 480 U.S. at 252.

II. The Second Circuit's Confiscatory-Takings Analysis Does Not Warrant Review

A. The Decision Below Does Not Conflict with Any Other Courts

Unable to identify any circuit split regarding confiscatory takings, Petitioners argue that the Second Circuit's decision conflicts with rulings from the supreme courts of New Jersey, Washington, and California. Pet. 25–27 (citing *Hutton Park Gardens v. Town Council of W. Orange*, 68 N.J. 543 (1975); *Jeffery v. McCullough*, 97 Wash.2d 893 (1982); *Kennedy v. Seattle*, 94 Wash.2d 376 (1980); *Birkenfeld v. City of Berkeley*, 17 Cal. 3d 129 (1976)). But even these decades-old state court cases do not conflict with the decision below.

While Petitioners state that *Birkenfeld*, which predated *Penn Central*, "found a rent control regulation unconstitutional under a confiscatory takings analysis," Pet. 26, the California Supreme Court has made

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§ 235-f(2)-(4); *Fed. Waste Paper Corp. v. Garment Ctr. Capitol*, 268 A.D. 230, 234 (1st Dept. 1944), *aff'd*, 294 N.Y. 714 (1945); Restatement (Second) of Torts § 189 (1965).

clear that *Birkenfeld* and its progeny "were all due process cases" and that the court "never held that either the state or federal Constitution requires application of the fair return on investment formula or any other specific formula" for evaluating "rent ceilings." *Kavanau v. Santa Monica Rent Control Bd.*, 16 Cal. 4th 761, 777 (1997).[17] Instead, the California Supreme Court has repeatedly held that, "[w]hen a regulation does not result in a physical invasion and does not deprive the property owner of all economic use of the property, a reviewing court must evaluate the regulation in light of the 'factors' the high court discussed in *Penn Central* and subsequent cases." *Id.* at 775; accord *Cal. Bldg. Indus. Assn. v. City of San Jose*, 61 Cal. 4th 435, 465 (2015).

Hutton Park does not even mention the Takings Clause, and a companion case decided the same day made clear that the court's "confiscation" test arose under "substantive due process." *Troy Hills Vill. v. Twp. Council of Parsippany-Troy Hills Twp.*, 68 N.J. 604, 618 (1975) (capitalization altered). As the California Supreme Court has observed, decisions like

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[17] Accord *Fisher v. City of Berkeley*, 37 Cal. 3d 644, 681 n.35 (1984) (noting that "it would be inappropriate to suggest that the *Birkenfeld* ['just and reasonable return'] statement can be used to predict the specific constitutional standard that we will articulate when we review a challenge to rent control as applied"), *aff'd*, 475 U.S. 260 (1986).

Hutton Park and *Birkenfeld* analyzed "rent control [as] a species of price control rather than a land use regulation" and turned on the "relationship between the regulation and the government's legitimate ends." *Santa Monica Beach, Ltd. v. Superior Ct.*, 19 Cal.4th 952, 967 (1999) (citation omitted). But this Court has held that "rent control" is a "form[] of land use regulation," *Yee*, 503 U.S. at 529, and in any event such a "means-ends test" sounds in due process and "is not a valid method of discerning whether private property has been 'taken' for purposes of the Fifth Amendment," *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 542 (2005). Accordingly, New Jersey courts consistently apply the *Penn Central* standard when reviewing challenges to rent stabilization, e.g., *Heyert v. Taddese*, 431 N.J. Super. 388, 439 (App. Div. 2013); *Silverman v. Rent Leveling Bd. of Cliffside Park*, 277 N.J. Super. 524, 537 (App. Div. 1994), and other land-use regulations, e.g., *Bernardsville Quarry, Inc. v. Borough of Bernardsville*, 129 N.J. 221, 231–42 (1992); *RAR Dev. Assocs. v. N.J. Sch. Const. Corp.*, 2008 WL 2663403, at *12 (N.J. Super. Ct. App. Div. July 9, 2008).

Both *Jeffery* and *Kennedy* turned on the provisions of the Washington State Constitution. Neither opinion cited any federal case or addressed any "federal question" whatsoever, making review particularly unwarranted. Sup. Ct. R. 10(a).

Because Petitioners have failed to establish any conflict between the Second Circuit's confiscatory-takings analysis below and any decision by any court, review is not warranted.

B. The Decision Below Is Correct

Nor did the Second Circuit misstate or misapply any law concerning confiscatory takings.

Petitioners take no issue with the Second Circuit's statement of the law set forth in *Duquesne Light Co. v. Barasch*, 488 U.S. 299 (1989) which explained that the "partly public, partly private status of utility property creates its own set of questions under the Takings Clause of the Fifth Amendment," *id.* at 307. See Pet. App. 50. Indeed, Petitioners cite *Duquesne Light* for the proposition that "[a] paradigmatic case of compelled service arises in public utilities." Pet. 27. And the Second Circuit correctly held that "[t]he confiscatory taking analysis is inapplicable to the RSL" because, as with the rent regulations challenged in *Bowles*, 321 U.S. at 517, the RSL does not compel landlords to "partake in or stay in the rent control market," Pet. App. 50–51.

Petitioners' contention that "*Block v. Hirsch*, 256 U.S. 135 (1921), applied … a confiscatory takings analysis," Pet. 5, mischaracterizes this Court's decision. *Block* held that, because "a public exigency will

justify the legislature in restricting property rights in land to a certain extent without compensation," "[h]ousing is a necessary of life," and "[t]he preference given to the tenant in possession is an almost necessary incident of the policy and is traditional in English law," a statute regulating permissible rents and grounds for eviction did not effect an unconstitutional taking by "go[ing] too far." 256 U.S. at 155–57. This Court has repeatedly reaffirmed that *Block* stands for the proposition that "a government regulation that merely prohibits landlords from evicting tenants unwilling to pay a higher rent" is not a *per se* taking. *Brown v. Legal Found. of Wash.*, 538 U.S. 216, 234 (2003) (quoting *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency,* 535 U.S. 302, 322–23 (2002)); accord *Fla. Power*, 480 U.S. at 252; *Loretto*, 458 U.S. at 440; *Bowles*, 321 U.S. 503 at 517; *Edgar A. Levy Leasing Co.*, 258 U.S. at 246.[18]

Petitioners also mischaracterize the RSL as "permanent" to try to distinguish it from the statute upheld in *Block*. Pet. 6. As the district court below correctly found, however, "the RSL is not permanent" because New York City must "reevaluate[] the housing

[18] Petitioners cite (at 28) *Tyler v. Hennepin County*, 143 S. Ct. 1369 (2023), which held that a state's retention of surplus proceeds from a tax sale constitute a *per se* taking, *id.* at 1376, but no such tax sales are at issue here, so *Tyler* has no bearing on this case.

supply and vacancies every three years to determine if the vacancy rate is below the statutory threshold for a housing emergency triggering continued regulation." Pet. App. 37.

Petitioners' argument that landlords are effectively utilities rests on the unsupportable claim that "the RSL mandates that [they] provide their property to tenants at government set rates indefinitely." Pet. 28. Not only did Petitioners voluntarily invite third parties to use their properties, but they also have failed to "demonstrate that they attempted to use any of the [RSL's] available methods to exit the market or evict problematic tenants" and "admit that they have not attempted to apply for any of the exemptions [from rent limits] allowed by the RSL." Pet. App. 8–9. And they admit that they may "pass along" to tenants, through rent increases, "costs for making major capital improvements to Petitioners' buildings or improvements to individual units." Pet. 13.[19] Petitioners are regulated landlords, not public utilities.

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[19] Petitioners complain that the RSL's "improvement and renovation limits" on rent increases are "inadequate" because the rent increases expire after 30 years, Pet. 13, but, as Petitioners alleged in their Complaint, the RSL provides for full recoupment of improvement or renovation costs within twelve-and-a-half years, Compl. ¶ 49(b), S.D.N.Y. No. 20-cv-01053, ECF No. 1; see N.Y.C. Admin. Code § 26-511(c)(6); 9 N.Y.C.R.R. § 2522.4. The

III. The Second Circuit's Regulatory-Takings Analysis Does Not Warrant Review

Because Petitioners cannot demonstrate that the Second Circuit's application of the *Penn Central* standard to their facial or as-applied claims conflicts with any decisions of any other circuit or departed from this Court's precedents, Petitioners request that the law be changed. See Pet. 30–34. It should not.

Petitioners argue that the *Penn Central* standard should be refashioned "[]consistent with the original public meaning of the Takings Clause." Pet. 31. "Before the 20th century," however, "the Takings Clause was understood to be limited to physical appropriations of property," *Cedar Point*, 141 S. Ct. at 2071, so such refashioning would not help Petitioners.[20] And

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remaining seventeen-and-a-half years of rent increases are therefore surplus profits.

[20] Petitioners repeatedly cite the non-controlling opinions in *Bridge Aina Le'a, LLC v. Hawaii Land Use Comm'n*, 141 S. Ct. 731, 731–32 (2021) (Thomas, J., dissenting from the denial of certiorari), and *Nekrilov v. City of Jersey City*, 45 F.4th 662, 682–86 (3d Cir. 2022) (Bibas, J., concurring). See Pet. 6, 31–32, 34. But Justice Thomas opined that there may be "no such thing as a regulatory taking," 141 S. Ct. at 732, and Judge Bibas's view that, "at the Founding, deprivations of property rights would have been takings, regardless of whether they involved physical intrusions," 45 F.4th at 684, cannot overcome *Cedar Point*'s

the Second Circuit correctly held that the RSL does not physically appropriate property either facially or as applied to Petitioners. See *supra* pp. 16–20.

Petitioners are also wrong in arguing that the *Penn Central* standard is "unworkable." Pet. 16. For decades, this Court has consistently applied it to claims of non-categorical takings.[21]

Petitioners cast aspersions on *Penn Central*'s economic-impact and investment-backed-expectations factors as "unhelpful" and "analytically empty," arguing that the character analysis is "essential." Pet. 33. But this Court has "time and again" explained that the economic impact and investment-backed expectations "are keenly relevant to takings analysis generally," *Lucas*, 505 U.S. at 1019 n.8, and are "[p]rimary"

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explanation that "the Takings Clause was [originally] understood to be limited to physical appropriations of property," 141 S. Ct. at 2071.

[21] *E.g.*, *Murr v. Wisconsin*, 582 U.S. 383, 393, 405 (2017); *Ark. Game & Fish Comm'n v. United States*, 568 U.S. 23, 37 (2012); *Tahoe-Sierra*, 535 U.S. at 342; *Palazzolo v. Rhode Island*, 533 U.S. 606, 632 (2001); *Babbitt v. Youpee*, 519 U.S. 234, 243 & n.3 (1997); *Hodel v. Irving*, 481 U.S. 704, 713–14 (1987); *Connolly v. Pension Ben. Guar. Corp.*, 475 U.S. 211, 224–25 (1986); *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1005 (1984); *PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74, 83 & n.7 (1980); *Andrus v. Allard*, 444 U.S. 51, 65 (1979).

to the *Penn Central* standard specifically, *Lingle*, 544 U.S. at 538–39. Character is an additional factor that "may be relevant" in particular cases. *Lingle*, 544 U.S. at 539. Petitioners' apparent effort to boil *Penn Central* down to a mere character analysis would, if adopted, surely result in the kind of standardless "decisional tool" they purport to decry. Pet. 34 (citation omitted).

Petitioners also mischaracterize the decision below. They contend that, in applying the character factor to their as-applied claims, the Second Circuit "wholly ignored the physical character of the RSL." Pet. 31 (citing Pet. App. 11–12).[22] But the Second Circuit, in rejecting Petitioners' *facial* claim, expressly adopted the court's prior decision in *Community*

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[22] Petitioners argue, in a footnote, that the dismissal of their as-applied claims as unripe—because Petitioners never sought available exemptions from rent limits—contravened the ripeness rule set forth in *Pakdel v. City & County of San Francisco*, 141 S. Ct. 2226, 2229–30 (2021). See Pet. 30 n.3. But "[t]he claims in *Pakdel* were ripe because the plaintiffs had sought an exemption and there was 'no question about the city's position' denying it." *74 Pinehurst*, 59 F.4th at 565 (quoting *Pakdel*, 141 S. Ct. at 2230). Petitioners, by contrast, "have not sought exemptions," and their mere "[s]peculation" about the likelihood of obtaining exemptions "is insufficient under *Pakdel*." *Id.* In any event, the Second Circuit's alternative holding rejecting Petitioners' as-applied claims on the merits, see Pet. App. 10–12, was correct for the reasons discussed by the Second Circuit below.

Housing, Pet. App. 6, which rejected the argument that the RSL has the character of a taking because it "constitutes a physical invasion," *Cmty. Hous.*, 59 F.4th at 555. This consideration of the non-invasive character of the RSL defeats Petitioners' premise for arguing that "*Penn Central* 'is inconsistent with the historical compact recorded in the Takings Clause' and must be corrected." Pet. 32 (quoting *Lucas*, 505 U.S. at 1028).

Petitioners also contend that the Second Circuit "overreli[ed] on the claimed public purpose of the RSL," Pet. 32, but the Second Circuit actually held that the *breadth* of the RSL, like that of the landmarking regulation at issue in *Penn Central*, was uncharacteristic of a taking, see Pet. App. 12 ("The existence of a broader regulatory regime weighs against finding a regulatory taking."); accord *74 Pinehurst*, 59 F.4th at 568 (holding that the RSL does not have the character of a taking because, among other things, it "is part of a comprehensive regulatory regime that governs nearly one million housing units in the City"); *Cmty. Hous.*, 59 F.4th at 555–56 (same). Petitioners' passing effort to revive the means-ends reasoning of the dissenting opinion in *Pennell v. San Jose*, 485 U.S. 1, 22 (1988) (Scalia, J., concurring in part, dissenting in part), is foreclosed by *Lingle*, 544 U.S. at 542–43.

IV. The Case Is a Poor Vehicle for Addressing the Parameters of the Takings Clause

Petitioners seek overbroad relief for the narrow "injuries" they allege, manufacturing a legal controversy out of political disagreements. The Petition attacks the RSL in its entirety without itemizing provisions of that extensive statutory scheme that have purportedly injured Petitioners. See Pet. i. As set forth above, see *supra* pp. 7–10, the RSL comprises a wide variety of provisions regarding rent increases, evictions, renewals, and changes in use of buildings—including numerous landlord-friendly provisions. "[A] plaintiff must demonstrate standing separately for each form of relief sought," but Petitioners attempt no such showing as to each and every aspect of the RSL. *DaimlerChrysler v. Cuno*, 547 U.S. 332, 352 (2006) (quoting *Friends of the Earth, Inc. v. Laidlaw Env't Servs. (TOC), Inc.*, 528 U.S. 167, 185 (2000)).

Petitioners' allegations are also insufficiently particularized for standing. Petitioner 335-7 LLC claimed standing based solely on the conclusory assertion that the HSTPA "eliminated 335-7's opportunity to make a positive return on [its] investment." Compl. ¶ 23. But 335-7 LLC makes no claim as to what return it has achieved or what return it would achieve were the RSL struck down, much less how striking down the entire RSL is necessary to achieving any such return.

Petitioners 699 Venture Corp.,[23] 431 Holding LLC, 226 LLC, and 335-7 LLC finally assert that "[t]he evaporation of value in their holdings has been caused by" various provisions of the RSL. *Id.* ¶ 25. Without any specifics on this purported "evaporation of value" or any connection between such an evaporation and specific provisions of the RSL, they cannot allege a concrete and particularized injury-in-fact.

Petitioner FGP 309 LLC ("FGP") at least attempts to establish standing by alleging that the 2019 amendments to the RSL caused a buyer to lower its offer price to buy a building from FGP. *Id.* ¶ 22. But it has failed to avail itself of self-help measures necessary to establish ripeness. No Petitioner, including FGP, has availed itself of any of the hardship exemptions available under the RSL. Pet. App. 9. FGP claims that, having sold its building, it is no longer eligible for the exemption. But FGP had every opportunity to apply for that exemption prior to selling, which could well have raised the building's sale price, and it chose not to do so. It is thus impossible to determine how much, if any, of FGP's alleged injury is traceable to the RSL

[23] Although 699 Venture Corp. also alleged standing on the ground that it was "defending ten rent overcharge claims," Compl. ¶ 24, Petitioners subsequently withdrew their claim based on the RSL's overcharge provisions, and 699 Venture Corp. prevailed in its overcharge proceeding, see *supra*, note 12.

as opposed to FGP's failure to ripen its claim using measures made available by the RSL. Pet. App. 9–10.

Petitioners' facial challenge to the RSL is especially unsuited for adjudication by this Court. To succeed, Petitioners would have to "establish that no set of circumstances exists under which the [RSL] would be valid." *United States v. Salerno*, 481 U.S. 739, 745 (1987). Petitioners cannot surmount this burden because, as set forth above, see *supra* pp. 8–10, 16–17, 19–20, there are abundant circumstances in which even Petitioners cannot dispute the RSL does not even colorably raise constitutional questions. Nor have they disputed the Second Circuit's recognition that the different circumstances of different landlords—such as those who acquired properties before the RSL took effect and those who did so after the RSL had been repeatedly amended—frustrate a facial takings analysis. See Pet. App. 4–6. This facial challenge presents a burden Petitioners cannot meet and demands that this Court exhaustively review every application of the RSL rendering it a poor and unworkable vehicle for review of any constitutional question.

More generally, a local housing scheme that implicates a variety of state laws that evolved through the political process over the course of "the last hundred years," Pet. 35, to manage shifting municipal conditions is a poor case for review. As set forth above, see *supra* pp. 2–10, rent stabilization in New York is

governed by a patchwork of statutes that have been repeatedly amended and supplemented in the push-and-pull of politics and in light of legislative findings regarding economic conditions in New York City and New York State.[24] Sometimes those changes have favored landlords; other times they have favored tenants. The landlords' attempt "to short circuit the democratic process" through a facial challenge should be rejected. *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451 (2008).

* * *

[24] Petitioners' assertion that other jurisdictions—including California, Oregon, Minnesota, and Maryland—are "following a path carved by New York and blessed by the Second Circuit," Pet. 36, ignores that rent and eviction regulations have existed in these jurisdictions repeatedly over the decades, see, *e.g.*, *Thunderbird Mobile Club, LLC v. City of Wilsonville*, 234 Or. App. 457 (2010); *Arcadia Dev. Corp. v. City of Bloomington*, 552 N.W.2d 281 (Minn. Ct. App. 1996); *Nash v. City of Santa Monica*, 37 Cal. 3d 97 (1984); *Birkenfeld*, 17 Cal. 3d at 137–38; *Heubeck v. City of Baltimore*, 205 Md. 203, 205 (1954); *Rent Limit Fixed in 301 New Areas*, N.Y. Times (Apr. 29, 1942), nyti.ms/3YEmLN0.

CONCLUSION

The Petition for a writ of certiorari should be denied.

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