No. 23-1148

IN THE
Supreme Court of the United States

G-MAX MANAGEMENT, INC., et al.,
Petitioners,
v.
State of NEW YORK, et al.,
Respondents.

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

BRIEF IN OPPOSITION FOR STATE RESPONDENTS

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COUNTERSTATEMENT OF QUESTIONS PRESENTED

1. Whether the court of appeals properly rejected petitioners' facial and as-applied physical takings challenges to New York's Rent Stabilization Law, insofar as it was amended by the Housing Stability and Tenant Protection Act of 2019, given the law's numerous constitutional applications and petitioners' failure to allege any government-forced occupation of their property.

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

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INTRODUCTION

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

The state Legislature has repeatedly amended the RSL in response to changing economic and local conditions. In the 1990s, for example, the Legislature adopted many owner-friendly provisions, including adding new grounds for rent increases and permitting deregulation of certain units upon vacancies. By the 2010s, however, it became clear that these provisions were pervasively abused in ways that were disrupting the housing market. Accordingly, in 2019, the Legislature enacted the Housing Stability and Tenant Protection Act (HSTPA), ch. 36, 2019 N.Y. Laws 134, 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 (twelve property owners) initiated this action seeking to invalidate the amendments made by the HSTPA as purportedly

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[1] This brief is submitted on behalf of respondents State of New York, New York Attorney General Letitia James, Division of Housing and Community Renewal (DHCR) Commissioner RuthAnne Visnauskas, and DHCR Deputy Commissioner Woody Pascal.

violative of the Takings Clause of the Fifth Amendment to the United States Constitution. The U.S. District Court for the Southern District of New York (Karas, J.) dismissed the complaint for failure to state a claim (Pet. App. 18-130). The Second Circuit affirmed, observing that petitioners' claims were "substantially similar" to others it had rejected in two recent cases: *Community Housing Improvement Program v. City of New York* and *74 Pinehurst LLC v. New York*. (Pet. App. 5; *see id.* at 1-17.) The plaintiffs in these two cases—as well as the plaintiffs in a third related case, *335-7 LLC v. City of New York*—petitioned for certiorari, and this Court denied each of the petitions.[2] This petition should likewise be denied.

First, petitioners ask this Court to review whether the HSTPA constitutes a physical taking both facially and as applied to their property. This case is a poor vehicle to consider that question. The RSL, as amended by the HSTPA, 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, which is materially identical to the facial claims raised in the multiple petitions this Court has denied.

Petitioners' sole attempt to distinguish their case from those in which the Court recently denied certiorari is to feature two as-applied claims, neither of which is ripe for judicial review. Specifically, no petitioner has ever received a decision denying them the personal use

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[2] *See 74 Pinehurst LLC v. New York*, No. 22-1130, 2024 WL 674658 (U.S. Feb. 20, 2024) (decided together with *335-7 LLC v. City of New York*, No. 22-1170); *Community Hous. Improvement Program v. City of New York*, 144 S. Ct. 264 (2023).

of a regulated unit, and no petitioner has ever attempted to convert their building into a condominium or cooperative. Accordingly, there are no allegations, much less an adequate record, on which to "consider whether specific New York City regulations prevent petitioners from evicting actual tenants for particular reasons," *74 Pinehurst LLC v. New York*, 2024 WL 674658, at *1 (U.S. Feb. 20, 2024) (statement of Thomas, J.).

In any event, the court of appeals correctly applied settled law to hold that the RSL, as amended by the HSTPA, does not create 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 law permissibly regulates property use and gives owners various options to change the use of their property and substantial rights to control who occupies it. The decision below is consistent with *Cedar Point Nursery v. Hassid*, which expressly distinguished between the regulation of property that owners voluntarily hold open to third parties and government-forced intrusions on private land. 594 U.S. 139, 156-57 (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 law at issue here.

Second, petitioners ask this Court to review whether the amendments made by the HSTPA effect a regulatory taking both facially and as applied to their property. At the outset, regulatory takings challenges are generally unsusceptible to facial review under the fact-intensive

Penn Central inquiry. In addition, the court of appeals correctly held that petitioners' as-applied regulatory takings claims are unripe because petitioners did not seek statutory exemptions from limits on rent increases.

These threshold defects aside, the court of appeals correctly applied *Penn Central* to reject petitioners' claims. Echoing the prior unsuccessful petitions in nearly identical challenges, petitioners call for *Penn Central* to be overruled. There is no basis for that drastic course.

STATEMENT

A. Legal Background

1. The history of rent regulation in New York State dates to at least World War II, when labor shortages and other wartime forces precipitated an acute housing crisis.[3] 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

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

the amount by which property owners may increase rents each year and imposing certain restrictions on evictions.[4] 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 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

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[4] By contrast, rent control directly sets rental rates for a relatively small number of covered units. Rent control is not at issue in this suit. (Pet. App. 151.)

contained six or more units. *Id.* § 5, 1974 N.Y. Laws at 1515-16 (Unconsol. Law § 8625). 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 2023, for example, the Board authorized a 3% increase for one-year leases, and consecutive annual increases of 2.75% and 3.20% for two-year leases.[5]

To account for the unique financial circumstances of individual property owners, the RSL permits land-

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[5] N.Y.C. Rent Guidelines Bd., 2023-24 Apartment/Loft Order #55 (June 21, 2023), https://rentguidelinesboard.cityofnewyork.us/2023-24-apartment-loft-order-55/.

lords 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).[6]

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 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[7]—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 a housing accommodation

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

[7] 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).

for their own business, RSC § 2524.5(a)(1)(i), demolish a 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, 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, Ch. 36, pt. D, § 5, 2019 N.Y. Laws at 138, limited certain rent increases upon renewal, *id.*, pt. E, § 2, 2019 N.Y. Laws at 139, and

narrowed the provisions allowing evictions for personal use, *id.*, pt. I, § 2, 2019 N.Y. Laws at 147. The HSTPA also adjusted the procedure for converting buildings in New York City to cooperatives or condominiums by, inter alia, requiring the agreement of 51% of tenants (up from 15%). *Id.*, pt. N, § 1, 2019 N.Y. Laws at 174. Finally, the HSTPA eliminated the need for legislative reauthorization of the RSL while retaining the requirement that municipalities regularly reassess the existence of a housing emergency. *See id.*, pt. A, § 1-a, 2019 N.Y. Laws at 135.

Since the HSTPA, the Legislature has adjusted the law in multiple ways that favor property owners. In 2022, the Legislature responded to concerns from small-building owners by allowing conversion of owner-occupied buildings with five or fewer units with the agreement of only 15% of tenants. Ch. 696, 2022 McKinney's N.Y. Laws 1990, 1990-91. And in 2024, the Legislature raised the amount by which landlords may increase rent for regulated units following qualifying renovations and improvements. Ch. 56, pt. FF, § 3, 2024 McKinney's N.Y. Laws (Westlaw).

B. Procedural History

1. Petitioners are owners of fourteen residential apartment buildings with units subject to the RSL. All but one of the buildings is located in New York City; the remaining building is located in Yonkers, a neighboring city in Westchester County. (Pet. App. 144-148.) In January 2020, petitioners commenced a 42 U.S.C. § 1983 action in the Southern District of New York, naming as defendants the State of New York, New York Attorney General Letitia James, DHCR Commissioner RuthAnne Visnauskas, and DHCR Deputy Commis-

sioner Woody Pascal.[8] (Pet. App. 131.) Two tenant advocacy groups intervened as defendants. (Pet. App. 22 n.7.)

As relevant here, petitioners alleged that the RSL, as amended by the HSTPA, violates the Fifth Amendment as a physical and regulatory taking, both facially and as applied to petitioners. Petitioners sought a declaration that the amendments made by the HSTPA are unconstitutional and an injunction permanently enjoining the State from enforcing those statutory changes. (Pet. App. 222-226.)

2. The district court granted respondents' motions to dismiss the complaint.[9] (*See* Pet. App. 19-22.) The district court concluded that the RSL, as amended by the HSTPA, does not constitute a facial physical taking because it merely regulates owners' intended use of their property for residential rentals. The district court also dismissed petitioners' as-applied physical takings claims because none of the challenged provisions prevents petitioners from exiting the rental market. (Pet. App. 58-65, 71-82.)

Likewise, the district court dismissed petitioners' facial and as-applied regulatory takings claim because petitioners failed to allege a taking under the fact-intensive inquiry mandated by *Penn Central Transportation*

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[8] Petitioners' claims against New York City, the City of Yonkers, and Westchester County were all withdrawn or dismissed and are not at issue here. (Pet. App. 55; CA2 J.A. 99-102.)

[9] The court decided the motions to dismiss together with motions to dismiss a related action raising similar claims. (Pet. App. 19-22.) The Second Circuit affirmed in both cases, and the plaintiffs in the related action have also petitioned for a writ of certiorari. *See Building & Realty Inst. of Westchester & Putnam Cntys., Inc. v. New York*, No. 23-1220.

Co. v. City of New York, 438 U.S. 104 (1978). (Pet. App. 87-100.)

3. Soon after this Court denied certiorari in three prior cases challenging the RSL (see *supra* at 2 n.2), the court of appeals affirmed, observing that petitioners in this case raised "substantially similar claims" (Pet. App. 5).

First, the court determined that the RSL, as amended by the HSTPA, does not effect a facial physical occupation of petitioners' property insofar as it regulates a voluntary landlord-tenant relationship. (Pet. App. 6-7.) Similarly, petitioners' as-applied claims failed because petitioners did not allege that the law compels them to remain in the rental market or "that they have exhausted all the mechanisms contemplated by the RSL that would allow a landlord to evict current tenants." (Pet. App. 8 (quotation marks omitted).)

Next, the court rejected petitioners' facial regulatory takings claim because petitioners did not show that, "for all affected property holders, the economic impacts are universally negative and that investment-backed expectations were subverted." (Pet. App. 10.)

Finally, the court rejected petitioners' as-applied regulatory takings claims. The court determined that those claims were unripe because no petitioner had sought hardship exemptions that may have allowed them to increase rents above levels that the RSL generally allows. (Pet. App. 10-11.) The court also rejected the claims on the merits, finding that the alleged diminution in value of petitioners' property and petitioners' other allegations of economic harm did not support a regulatory taking. (Pet. App. 11.) The court also determined that petitioners failed to allege that the amendments made by the HSTPA ran contrary to their

reasonable investment-backed expectations given that they acquired their buildings knowing that they would be subject to extensive and evolving regulation. And the court further concluded that the RSL, as amended by the HSTPA, does not have the character of a taking. (Pet. App. 12.)

REASONS FOR DENYING THE PETITION

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

This case is a poor vehicle to address petitioners' facial and as-applied physical takings challenges. The RSL, as amended by the HSTPA, permits changes in use of property and evictions of tenants in many circumstances, and the existence of these exits from the rental market defeats petitioners' facial challenge. Petitioners' as-applied claims are also unworthy of review because they are speculative and unripe. In any event, the court of appeals correctly rejected petitioners' physical takings claims on the merits and there is no split in authority requiring this Court's review.

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

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

1. To prevail on a facial challenge, "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*, 587 U.S. 119, 138 (2019). "Facial 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). They are also inconsistent with principles of judicial restraint and "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 450-51.

Petitioners cannot prevail in their effort to invalidate the HSTPA because the law has countless lawful applications. Petitioners cannot dispute that the law, 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 7-8. 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.

Petitioners do not account for these indisputably lawful applications of the statute. They merely assert that the available exit options are "narrow." (Pet. 15.) But the existence of constitutional applications of the RSL is "fatal" to petitioners' facial challenge. *See Washington State Grange*, 552 U.S. at 457. Petitioners do not demonstrate that any aspect of the HSTPA amendments "completely bar[s] landlords from evicting tenants," making their facial challenge indistinguishable from those in which this Court recently denied review in three separate cases. *See 74 Pinehurst*, 2024 WL 674658, at *1 (statement of Thomas, J.).

2. Petitioners' as-applied physical takings challenges to the HSTPA's amendments to the statutory provisions governing personal-use and condominium/cooperative conversion also suffer from insurmountable vehicle problems.

First, no court has denied any petitioner the ability to reclaim a regulated unit for their personal use. Petitioners rely exclusively on the conclusory allegation that petitioners Ordway and Guerrieri were unable reclaim a third unit for personal use after having previously reclaimed two other regulated units in the same building. (Pet. 9-10, 16.) According to the complaint, the HSTPA "forced an abrupt end" to then-pending holdover proceedings against the unwanted tenant occupying the third unit. (Pet. App. 192; *see also* Pet. 26-27 (stating that the HSTPA "short-circuited" the proceeding).) But petitioners fail to explain that Ordway and Guerrieri *voluntarily discontinued* that holdover proceeding and renewed the tenant's lease two months before filing this federal action—all before they could receive a ruling on whether they were entitled to reclamation. (*See* CA2 ECF No. 105.) Ordway and Guerrieri thus cannot show that the HSTPA, rather than their own litigation choices, caused their alleged injury.

Petitioners further fail to disclose that Ordway and Guerrieri are currently prosecuting a separate action in state court challenging the retroactive application of the HSTPA to their property. Ordway and Guerrieri commenced this state-court action while the instant proceeding was pending in the court of appeals. Yet petitioners failed to inform the court of appeals or respondents of its existence. After respondents brought the state-court action to the attention of the court of appeals, petitioners did not explain how their claims

could possibly be ripe while they are actively litigating whether and to what extent the amendments made by the HSTPA to the personal-use provision apply to them. (*See* CA2 ECF Nos. 105, 107). Based on this history, the court correctly found that petitioners failed to exhaust efforts to evict the purportedly unwanted tenant. (Pet. App. 8.)

Second, no petitioner has attempted to convert a building into condominiums or cooperatives or alleges a present desire to do so. To the contrary, petitioners allege that they once "contemplated" converting their buildings but that the amendments made by the HSTPA makes conversion too difficult. (Pet. App. 182, 187-188, 195-196, 198-199; *see* Pet. App. 177-178.) Petitioners' failure to allege they have taken any steps to convert their buildings renders their claims "speculative and not ripe." (*See* Pet. App. 74 n.20; *see also* Pet. App. 8.)

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

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

1. Physical takings "are relatively rare" and "easily identified." *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 324 (2002). The "essential question" is "whether the government has physically taken property for itself or someone else—by whatever means." *Cedar Point*, 594 U.S. at 149.

In *Yee v. City of Escondido*, 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. This Court determined 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. In other words, a restriction on landlords' ability to choose incoming tenants "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 was consistent 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"). 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 exception to physical takings doctrine for laws that purport to regulate the landlord-tenant relationship." (Pet. 18.) Instead, the court of appeals held, consistent with this Court's precedent, that a rent regulation is not facially invalid as a physical taking where it expressly provides for exits from the rental market. (Pet. App. 6-7 (citing *Yee*, 503 U.S. at 527).)

Contrary to petitioners' assertions (Pet. 17), it was both necessary and appropriate for the court of appeals to ask whether the challenged provisions are "unconditional" or instead preserve landlords' ability to exit the rental market in assessing petitioners' facial claim that the amendments to the RSL made by the HSTPA are unconstitutional in all of their applications (see *supra* at 12-13). The court of appeals was also correct to conclude (Pet. App. 8) that the availability of eviction on the face of the RSL will foreclose an as-applied challenge where there is no allegation that the challenger has ever attempted to evict unwanted tenants or to change the use of their property. *Cf. 74 Pinehurst*, 2024 WL 674658, at *1 (statement of Thomas, J.) (as-applied challengers must show that the law stopped them from "evicting actual tenants"). In sum, 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 the HSTPA amendments in particular factual circumstances.

3. Nonetheless, the court of appeals correctly dismissed petitioners' claims in this case. As in *Yee*, petitioners voluntarily hold out their property for rent, and the 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 substantial federal question in challenge to rent-control ordinance limiting removal of property from rental market). Petitioners do not plausibly allege that the RSL compels all landlords—or even petitioners themselves—to remain in the rental market against their wishes. Petitioners thus do not present the "different case" that *Yee* envisioned "were the statute, on its face or as applied, to compel a landlord over objection to rent his property or to refrain in perpetuity from terminating a tenancy." *See* 503 U.S. at 528.

First, petitioners are wrong to argue that the HSTPA's amendments to the RSL's longstanding personal-use provision effects a taking by "prevent[ing] the owners from living in their own property." (Pet. 16.) As amended, the RSL allows owners to recover one unit for personal use upon a showing of "immediate and compelling" need. RSL § 26-511(c)(9)(b). Moreover, the law does not impose any restrictions on the reclamation of vacant units. Indeed, petitioners Ordway and Guerrieri have already reclaimed two units for personal use in this manner. (Pet. App. 190.) The availability of these exit options from the rental market forecloses a facial challenge to the statute. *See Yee*, 503 U.S. at 528-29.

Petitioners' as-applied claim that the RSL unconstitutionally prevents Ordway and Guerrieri from recovering a third unit for personal use is also meritless. As the court of appeals correctly held, these petitioners failed to allege that they availed themselves of "available methods to either exit the rental market or evict tenants," including by utilizing the RSL's express personal-use exception. (Pet. App. 8.) As explained above (at 14-15), Ordway and Guerrieri voluntarily discontinued their efforts to evict the tenant currently

residing in the unit and it is yet unresolved whether the amendments to the personal-use provision made by the HSTPA apply to their property at all. Petitioners are therefore wrong to argue that the RSL "has given another person an exclusive right to occupy" their property. (*See* Pet. 16.)

Second, petitioners complain that the HSTPA amendments require owners to obtain the approval of a majority of tenants before converting a rental apartment building into a cooperative or condominium. *See* N.Y. Gen. Bus. Law § 352-eeee(1)(b). But petitioners miss the point: the availability of an exit from the rental market through conversion is itself sufficient to defeat petitioners' facial claim. *See Yee*, 503 U.S. at 527-28. Notwithstanding petitioners' complaints about the purported difficulty of the conversion process, the fact that conversion is challenging or "a kind of gauntlet," does not establish a facial physical taking.[10] *See id.* at 528. And to state an as-applied claim, petitioners were required to allege that they "have run that gauntlet" by attempting conversion. *See id.* Petitioners do not allege that they have taken any steps to convert their buildings or that they have a present desire to do so. See *supra* at 15.

Petitioners are also wrong to argue that "landlords have no choice but to continue renting" unless they successfully convert their buildings. (*See* Pet. 27.) New York law places no restrictions on a property owner's ability to sell a building, or a partial interest in a building, to a buyer who maintains the units' stabilized status. And petitioners cite no authority holding that

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[10] The Legislature amended the law in 2022 to ease the conversion requirements for owners of small apartment buildings (see *supra* at 9), a fact that petitioners fail to mention.

the Takings Clause mandates the availability of an owner's preferred form of sale.

Third, petitioners falsely assert (Pet. 28) that "a tenant, unless she commits a crime or creates a nuisance in the apartment, can live in the owner's apartment as long as she wishes." This mischaracterization ignores landlords' ability to expeditiously evict tenants on a variety of additional grounds, including for nonpayment of rent, violating lease terms, damaging the premises, and refusing access to the owner. *See* RSC § 2524.3. A landlord may also refuse to renew a lease if the tenant does not use the regulated unit as their primary residence or if the landlord decides to exit the rental market by changing the use of their property for specified purposes. *Id.* §§ 2524.4-2524.5. And contrary to petitioners' assertion that a tenant can simply "designate a successor" (Pet. 28), succession rights extend only to individuals who have long resided with the tenant and share a close, familial-like relationship.[11] *See* RSC §§ 2520.6(o), 2523.5(b)(1). There is thus no merit to petitioners' contention (Pet. 28) that the RSL requires them to "continue renting their property indefinitely."

4. Despite petitioners' assertions to the contrary (Pet. 15-19), the court of appeals correctly applied this Court's decision in *Cedar Point Nursery v. Hassid*, 594 U.S. 139.

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

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

speak with workers. *Id.* at 144-45, 162. 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 160-62. 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 156-57 (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. 7.) In contrast to the property at issue in *Cedar Point*, landlords generally invite third parties to occupy the premises as tenants and the regulations challenged here govern the landlord-tenant relationship that owners have voluntarily entered. *See Yee*, 503 U.S. at 528.[12]

Petitioners likewise misplace their reliance (Pet. 17) on *Horne v. Department of Agriculture*, which held that a statute requiring raisin growers to reserve a portion of their crop for the government was a physical

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[12] Statutory rent regulation like the RSL is also "consistent with longstanding background restrictions on property rights" and thus would not effect a taking even if it involved a physical invasion (which it does not). *See Cedar Point*, 594 U.S. at 160. Far from a "modern affair" (Pet. 3), 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").

taking. 576 U.S. 350, 354-55, 362 (2015). In so holding, the Court disagreed that the reserve requirement was not a taking because "raisin growers voluntarily choose to participate in the raisin market." *Id.* at 365. But unlike *Horne*, where the government physically confiscated a portion of farmers' crops without the promise of compensation, the RSL does not result in a "compelled physical occupation" because property owners willingly accept tenants' presence in apartments when they choose to become landlords.[13] *See Yee*, 503 U.S. at 530-31. In addition, landlords remain free to collect rents (subject to certain limits on the amount of annual increase).

5. Finally, petitioners are incorrect to argue (Pet. 13-15, 28) 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

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[13] Similarly, *Loretto*'s footnote explaining that "a landlord's ability to rent his property may not be conditioned on his forfeiting the right to compensation for a physical occupation" is irrelevant where, as here, "there has simply been no compelled physical occupation." *See Yee*, 503 U.S. at 531-32 (quoting *Loretto*, 458 U.S. at 439 n.17). (*Contra* Pet. 17.)

order had deprived the landlord "of its right to exclude existing tenants without compensation." *Id.*

In contrast, the RSL does not prevent landlords from excluding lease violators, including for nonpayment of rent. To the contrary, landlords retain substantial control over who rents their property, including robust eviction powers. See *supra* at 7, 20. The RSL also does not force landlords to rent their property without compensation but rather provides multiple mechanisms to ensure that landlords can receive a reasonable return, including by allowing landlords to offset the cost of improvements and renovations through rent increases, providing hardship exemptions to landlords, and requiring that the Rent Guidelines Board consider landlords' costs and expenses in setting maximum annual rent increases.[14] See *supra* at 6-7.

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.

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[14] The law challenged in *Kagan v. City of Los Angeles* likewise did not compel the plaintiff landlord to rent property without compensation or to lease violators; rather, the case involved a landlord's inability to reclaim a unit for personal use where the owner retained eviction rights and the ability to exit the rental market. *See* No. 21-55233, 2022 WL 16849064, at *1 (9th Cir. Nov. 10, 2022), *cert. denied*, 144 S. Ct. 71 (2023).

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*, 594 U.S. at 148. 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.*

This case is a poor vehicle to consider petitioners' regulatory takings claims, and the court of appeals correctly rejected them under *Penn Central*. Petitioners identify no split in authority, and their call for *Penn Central* to be overruled is meritless.

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

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

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

Petitioners' challenge to the RSL, as amended by the HSTPA, is improper for facial review because the law's effects vary substantially across property type, building size, and owner. For example, the effects of the

RSL's limits on rent increases differ from landlord to landlord, who each own buildings with different quantities of regulated units offered at different rents. (*See* Pet. App. 9-10, 144-148.) And landlords may seek individualized hardship exemptions allowing them to charge higher rents, as well as rent increases to offset specific building improvements. See *supra* at 6-7. Similarly, landlords' reliance interests may vary significantly based on when they purchased their property.

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."[15] *Id.* at 621.

The RSL allows landlords to apply for hardship exemptions permitting them to charge higher rents than would otherwise be authorized based on a landlord's inability to earn a sufficient return. RSL § 26-511(c)(6), (6-a); RSC § 2522.4(b)-(c). But petitioners "have not tried

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[15] This Court also articulated this finality requirement in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186-94 (1985). In *Knick v. Township of Scott*, this Court overruled *Williamson County*'s holding that federal plaintiffs must seek just compensation through state procedures before filing a Fifth Amendment takings claim in federal court, but the Court did not disturb *Williamson County*'s additional holding (relevant here) that "any taking was . . . not yet final" because "the developer still had an opportunity to seek a variance." *See* 588 U.S. 180, 187-88 (2019).

to take advantage of available hardship exemptions." (Pet. App. 10 (quotation marks omitted).) Petitioners' failure to seek, let alone obtain, a final administrative decision on the RSL's application to their properties renders their claims unripe. *See Hodel v. Virginia Surface Mining & Reclamation Ass'n*, 452 U.S. 264, 297 (1981) (rejecting as-applied takings claim when plaintiffs had not sought variance or waiver).

The court of appeals correctly rejected as "speculation" petitioners' argument below that hardship exemptions would not remedy their alleged injuries. (*See* Pet. App. 10-11 (quotation and alteration marks omitted).) Petitioners do not contest this ruling, which alone is sufficient to defeat their as-applied regulatory takings claims.[16]

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

Petitioners' facial and as-applied regulatory takings claims fail under a straightforward application of *Penn Central*.

1. Petitioners do not plausibly allege that the RSL disrupted their reasonable investment-backed expectations, which are "particularly" important to the regulatory takings analysis. *See Penn Central*, 438 U.S. at 124. Such expectations are "informed by the law in force in the State in which the property is located." *See Arkansas Game & Fish Comm'n v. United States*, 568 U.S. 23, 38 (2012); *see also Murr*, 582 U.S. at 397-98. Thus, a plaintiff who knowingly does business in a

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[16] Petitioners' failure to attempt the conversion of their buildings into condominiums or cooperatives also renders any challenge to the amended provision governing such conversions unripe. (*See* Pet. App. 10-11.)

highly regulated field cannot claim that its reasonable expectations have been defeated when "the legislative scheme is buttressed by subsequent amendments to achieve that legislative end." *Concrete Pipe & Prods. of Cal., Inc. v. Construction Laborers Pension Tr. Fund*, 508 U.S. 602, 645 (1993) (quotation marks omitted) (collecting cases).

Petitioners do not dispute that landlords' expectations vary widely depending on when they purchased their property. Because petitioners cannot establish that the amendments made by the HSTPA disrupted the expectations of all landlords, their facial claim necessarily fails. (*See* Pet. App. 9-10.)

Petitioners also fail to plausibly allege that the HSTPA amendments disrupted their individual expectations. As the court of appeals found, petitioners "would have anticipated their rental properties would be subject to regulations, and that those regulations in the RSL could change yet again." (Pet. App. 12 (quotation marks omitted); *see also* Pet. App. 144-148 (noting that petitioners acquired their properties between 1995 and 2012).)

Petitioners do not explain how any specific HSTPA amendment ran counter to their investment-backed expectations and instead attempt to cast the entire package of legislative changes as "unprecedented." (*See* Pet. 22.) But the amended provisions to which petitioners object existed in substantially similar form prior to the HSTPA, which is only the latest in a long series of legislative changes to the broader rent stabilization

regime.[17] *See 74 Pinehurst LLC v. New York*, 59 F.4th 557, 567 (2d Cir. 2023), *cert. denied*, 2024 WL 674658 (2024). Petitioners' "claim that they could never have expected *this* change is not plausible." (Pet. App. 12 (quotation marks omitted).)

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

At the outset, petitioners do not dispute the court of appeals' holding that their facial claims fail because they "have not shown that, for all affected property holders, the [HSTPA's] economic impacts are universally negative." (Pet. App. 9-10.)

The court of appeals was also right to find that petitioners' allegations of economic impact do not support their as-applied claims. (*See* Pet. App. 11.) Specifically, petitioners fail to show how their alleged inability to collect higher rents or the unquantified diminution in their property values amount to a taking under this Court's precedents. *Cf. Concrete Pipe*, 508 U.S. at 645 (alleged diminution of 46% not indicative of taking). Nor do petitioners attempt to isolate the incremental impact of the HSTPA amendments from

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[17] For example, over the years, the threshold for tenant consent to condominium/cooperative conversion has changed from 35% to 15% to 51% (Pet. App. 64), and back to 15% for small-building owners, Ch. 696, 2022 McKinney's N.Y. Laws at 1990-91. And the RSL's limits on personal-use reclamations predate the HSTPA. *See* Ch. 36, pt. I, § 2, 2019 N.Y. Laws at 147.

the preexisting RSL framework—which they do not challenge as a taking.[18] (*See* Pet. 21-22.)

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

As discussed (at 17-22), the RSL, as amended by the HSTPA, does not approximate a physical invasion. And the court of appeals correctly found that "the RSL is concerned with 'broad public interests' and 'the legislature has determined that [it] is necessary to prevent 'serious threats to the public health, safety and general welfare.'" (*See* Pet. App. 12 (quoting *Community Hous. Improvement Program v. City of New York*, 59 F.4th 540, 555 (2d Cir. 2023), *cert. denied*, 144 S. Ct. 264 (2023)).)

Petitioners do not dispute that the Legislature enacted the HSTPA amendments to serve "important public interests," *see Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 485 (1987), and instead argue that the enacted measures "would be counterproductive" in practice (Pet. 20). But this Court has eliminated this type of means-end scrutiny from its takings jurisprudence because it "reveals nothing about the *magnitude or character of the burden* a particular

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[18] Petitioners also fail to account for intervening changes to the RSL favoring landlords, including an increase in the amount by which landlords may raise rents following qualifying renovations and improvements. See *supra* at 9.

regulation imposes upon private property rights" and thus is poor indication of whether a taking has occurred. *Lingle*, 544 U.S. at 542-43.

Petitioners are also wrong to assert that the law's allegedly disproportionate effect on certain landlords is indicative of a taking. (*See* Pet. 20.) "Legislation designed to promote the general welfare commonly burdens some more than others," and the fact that a landlord is "uniquely burdened" does not automatically give rise to a taking. *See Penn Central*, 438 U.S. at 133.

C. There Is No Basis to Overrule *Penn Central*.

Because petitioners cannot state a claim under *Penn Central*, they instead ask this Court to jettison the longstanding and seminal ruling. Contrary to petitioners' assertions (Pet. 22-25), none of the *stare decisis* factors weighs in favor of that drastic course.[19]

1. This Court has continually reaffirmed *Penn Central* and has never questioned its reasoning. *See, e.g.*, *Cedar Point*, 594 U.S. at 148; *Murr*, 582 U.S. at 393; *Lingle* 544 U.S. at 538-39; *Tahoe-Sierra*, 535 U.S. at 321-23; *Hodel v. Irving*, 481 U.S. 704, 713 (1987). Rather, this Court has explained that *Penn Central*'s treatment of regulatory takings is compelled by "[t]he text of the Fifth Amendment itself." *Tahoe-Sierra*, 535 U.S. at 321. While the Fifth Amendment's plain language requires the payment of compensation for physical takings, "the Constitution contains no comparable reference to regulations that prohibit a property owner from making certain use of her private property." *Id.* at 321-22. Accordingly, when a property owner chal-

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[19] This Court has declined similar invitations to revisit *Penn Central* in the context of other recent challenges to the RSL. *See* Pet. 31-33, *74 Pinehurst*, 2024 WL 674658 (No. 22-1130).

lenges the severity of a land-use regulation, "the predicate of a taking is not self-evident, and the analysis is more complex." *Id.* at 322 n.17.

Penn Central's ad hoc inquiry promotes the "flexibility" that has become a "central dynamic of the Court's regulatory takings jurisprudence." *Murr*, 582 U.S. at 394. And it does so by balancing individual property rights against "the government's well-established power to 'adjus[t] rights for the public good.'" *Id.* (quoting *Andrus v. Allard*, 444 U.S. 51, 65 (1979)). A flexible inquiry for regulatory takings is necessary considering the ubiquity of land-use regulations—most of which impact property values. *Tahoe-Sierra*, 535 U.S. at 322-23. "Treating them all as *per se* takings would transform government regulation into a luxury few governments could afford." *Id.* at 324. For more than 100 years, this Court has thus rejected any "set formula to determine where regulation ends and taking begins." *Goldblatt v. Town of Hempstead*, 369 U.S. 590, 594 (1962) (citing *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393 (1922)).

2. *Penn Central* is not "out of step with this Court's constitutional jurisprudence," as petitioners contend (Pet. 24). *Penn Central* does not discount historical practice but rather "aims to identify regulatory actions that are functionally equivalent to the classic taking in which government directly appropriates private property or ousts the owner from his domain." *Lingle*, 544 U.S. at 539. To that end, *Penn Central* probes "the magnitude of a regulation's economic impact and the degree to which it interferes with legitimate property interests." *Id.* at 540. This inquiry—which asks whether a regulation's effects are sufficiently severe that the owner's property has been "taken" within the meaning of the Constitution—is rooted in both text and history.

See Penn Central, 438 U.S. at 107; *Tahoe-Sierra*, 535 U.S. at 322 n.17.

3. *Penn Central* has not proven unworkable, and petitioners offer no substitute—much less an improvement on the original. Petitioners concede there is no circuit split concerning the application of *Penn Central*. (Pet. 29.) And despite arguing that courts "reach divergent results on similar facts" (*id.*), they provide no such examples. Instead, petitioners collect a limited number of concurring and dissenting opinions to inaccurately portray their misgivings as "widely acknowledged." (*Id.*) Petitioners' chief complaint is that regulatory takings are too hard to prove (*id.*), but this argument ignores the Court's deliberate effort to ensure that a right to compensation does not automatically spring from every land-use regulation. *See Murr*, 582 U.S. at 394. Ultimately, petitioners' concern that they cannot prevail under *Penn Central* is not one of workability but rather reflects the weakness of their case.

4. Finally, reliance interests are strong. For decades, governments and private actors have structured their relations around this Court's regulatory takings jurisprudence, of which *Penn Central* has remained the "polestar." *See Palazzolo*, 533 U.S. at 633 (O'Connor, J., concurring). Parties are "especially likely" to rely on this Court's property-law cases "when ordering their affairs" and thus "considerations favoring *stare decisis* are at their acme." *Kimble v. Marvel Ent., LLC*, 576 U.S. 446, 457 (2015) (quotation marks omitted). There is no basis to overrule *Penn Central* and thereby "destabilize the legal framework in which owners have made countless investment decisions," Daniel A. Farber, *Murr v. Wisconsin and the Future of Takings Law*, 2017 Sup. Ct. Rev. 115, 162 (2017).

CONCLUSION

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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