No. 23-1220

IN THE

Supreme Court of the United States

BUILDING AND REALTY INSTITUTE
OF WESTCHESTER AND PUTNAM
COUNTIES, INC., *et al.*,

Petitioners,

v.

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 RESPONDENT COMMUNITY VOICES HEARD

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QUESTIONS PRESENTED

This case involves facial and as-applied challenges under the Takings Clause, Contracts Clause, and Due Process Clause to the validity of New York's Rent Stabilization Law of 1969 and Emergency Tenant Protection Act of 1974, as amended by the Housing Stability and Tenant Protection Act of 2019, 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 RSL effects, facially or as-applied, a per se physical taking by circumscribing landlords' permissible grounds for evicting rent-stabilized tenants or refusing to renew their leases, while leaving open multiple avenues for landlords to reclaim possession and use of their property.

2. Whether the Second Circuit correctly affirmed the dismissal of Petitioners' regulatory-taking claims because (i) Petitioners failed to adequately allege that there was no set of circumstances under which the RSL would be valid, as required to prevail on their facial claim; (ii) Petitioners' as-applied claims were unripe because they failed to avail themselves of the remedial provisions of the RSL permitting them to apply for hardship exemptions from rent limits; and (iii) Petitioners in any event failed to plausibly demonstrate the factors

set forth in *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 124 (1978).

3. Whether the Second Circuit correctly held that Petitioners failed to plead any violations of the Contracts Clause because they provided no facts for a court to infer that they held any existing contracts affected by the RSL.

4. Whether the Second Circuit correctly held that Petitioners impermissibly dressed up their Takings Clause claim as a purported violation of substantive due process and that, even considering the merits, the RSL would withstand rational-basis review under the Due Process Clause.

CORPORATE DISCLOSURE STATEMENT

Respondent Community Voices Heard has no parent corporation, and no publicly held corporation owns 10% or more of its stock.

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INTRODUCTION

Petitioners are three landlord associations; two property-management companies; four corporate entities that own multi-unit apartment buildings in Westchester County, New York, as investment properties; and one limited partner of one of those corporate landlords.[1]

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 and Emergency Tenant Protection Act of 1974, as amended by the Housing Stability and Tenant Protection Act of 2019, and their attendant regulations (together, the "RSL") effect unconstitutional facial and as-applied physical and regulatory takings, as well as violations of the Contracts Clause and Due Process Clause.[2] The decision below was controlled by a prior panel's decisions in *Community Housing Improvement Program v. City*

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[1] Although the Petition identifies an additional corporate landlord, Sheridan Gardens LLC, as among the "plaintiffs," Pet. iii, Sheridan Gardens LLC was not a named plaintiff before the district court, *see* Pet. App. 20a n.1, was not an appellant before the Second Circuit, *see* Pet. App. 2a (caption), and is not a party to this case, *see* Docket, Case No. 23-1220.

[2] Respondent Community Voices Heard ("CVH") is a non-profit tenant advocacy organization that intervened below in defense of the RSL. A related certiorari petition by another group of landlords challenging the same decision below, which resolved appeals in separate but related cases, is pending. *G-Max Mgmt., Inc. v. New York*, No. 23-1148 (docketed Apr. 23, 2024).

of New York, 59 F.4th 540 (2d Cir.), *cert. denied*, 144 S. Ct. 264 (2023), and *74 Pinehurst LLC v. New York*, 59 F.4th 557 (2d Cir. 2023), *cert. denied*, No. 22-1130, 2024 WL 674658 (U.S. Feb. 20, 2024).

The RSL, which applies to nearly one million apartments in New York City alone, has (with various amendments) regulated rents and evictions for *fifty years* and has repeatedly been upheld against takings challenges.[3] The unanimous decision below, which faithfully applied clear, controlling precedent, is the latest in this long line of rulings upholding the RSL.

This Court declined to review three prior petitions raising substantially similar, if not identical, issues relating to Petitioners' claims under the Takings Clause. *See Cmty. Hous.*, 144 S. Ct. 264; *74 Pinehurst*,

[3] *See, e.g.*, *Cmty. Hous.*, 59 F.4th 540; *74 Pinehurst*, 59 F.4th 557; *335-7 LLC v. City of New York*, No. 21-823, 2023 WL 2291511 (2d Cir. Mar. 1, 2023), *cert denied*, No. 22-1170, 2024 WL 674658 (U.S. Feb. 20, 2024); *Harmon v. Markus*, 412 F. App'x 420 (2d Cir. 2011); *W. 95 Hous. Corp. v. 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); *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); *Rent Stabilization Ass'n of City of N.Y., Inc. v. Dinkins*, 5 F.3d 591 (2d Cir. 1993); *Rent Stabilization Ass'n of N.Y.C., Inc. v. Higgins*, 83 N.Y.2d 156 (1993), *cert denied*, 512 U.S. 1213 (1994); *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); *8200 Realty Corp. v. Lindsay*, 27 N.Y.2d 124, 129 (1970); *Somerset-Wilshire Apartments, Inc. v. Lindsay*, 304 F. Supp. 273 (S.D.N.Y. 1969).

2024 WL 674658; *335-7 LLC*, 2024 WL 674658. As in those cases, 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. Nor does Petitioners' meager attempt to revive their claims under the Contracts Clause and Due Process Clause justify review. The Petition should therefore 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 upheld those protections. Petitioners treat the RSL's "patchwork" of laws and regulations as though they were a single statute whose provisions may be evaluated in one swoop, but the reality is far more complex. *La Guardia v. Cavanaugh*, 53 N.Y.2d 67, 70 (1981).

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.[4] The laws—which capped rent increases and prevented evictions without cause for ten years—were "the subject of ongoing litigation." *Id.* This Court and the New York Court of Appeals repeatedly upheld their constitutionality.[5]

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, which froze rents at 1943 levels and restricted the permissible grounds for eviction, and later the Housing and Rent Act of 1947, which exempted new buildings from regulation but left in place controls for existing buildings. *See id.* at 545. This Court upheld both statutes (and their attendant rent and eviction regulations) against Takings Clause challenges.[6]

In 1950, authority to regulate residential rents in New York passed to the Temporary State Housing

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[4] In its summary affirmance below, the Second Circuit wrote "primarily for the parties," "assume[d] a familiarity with the facts," and noted "that a majority of the issues" on appeal were controlled by the Second Circuit's prior decisions in *Community Housing* and *74 Pinehurst*. Pet. App. 6a. This Court denied the petitions for writs of certiorari in both cases. *Supra*, p. 3.

[5] *See Edgar A. Levy Leasing Co. v. Siegel*, 258 U.S. 242, 249–50 (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).

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

Rent Commission, whose regulations continued to govern "rent levels and legal grounds for evictions," *id.*, and likewise were repeatedly upheld against constitutional attack.[7]

Pursuant to a 1962 statute delegating rent-regulation authority to large cities, N.Y. Unconsol. Laws § 8605, the New York City Council enacted the Rent Stabilization Law of 1969 (the "1969 RSL"), which initially applied to buildings with six or more units constructed between 1947 and 1969 and established a Rent Guidelines Board to regulate annual rent increases for rent-stabilized apartments in the city. *See* Pet. App. 22a–23a, 244a. The 1969 RSL's regulations set the permissible grounds for evicting, or declining to renew the leases of, rent-stabilized tenants. *See* Pet. App. 23a; *The New York Rent Stabilization Law of 1969*, 70 Colum. L. Rev. 156, 173–74 (1970). One basis for eviction was the conversion of a rent-stabilized building to condominium ("condo") or cooperative ("co-op") ownership, which required 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); *Parkchester Apartments Co. v. Lefkowitz*, 51 A.D.2d 277, 279 (1st Dep't

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[7] *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).

1976), *aff'd*, 41 N.Y.2d 987 (1977). Multiple courts upheld the 1969 RSL's constitutionality.[8]

As part of 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. *See generally Hewlett Assocs. v. City of New York*, 57 N.Y.2d 356, 360 (1982); *La Guardia*, 53 N.Y.2d at 73.

The hoped-for construction and renovation did not materialize, however, and the state enacted the Emergency Tenant Protection Act of 1974 ("ETPA"), which "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). The ETPA "is not a rent and eviction regulating law" but rather "an enabling act." *La Guardia*, 53 N.Y.2d at 74. Initially, it permitted New York City and municipalities in the three surrounding counties—Westchester, Rockland, and Nassau—to opt into rent and eviction regulations for buildings with six or more units constructed before 1974 that were not already regulated. *Id.* at 74–75; Pet. App. 23a–24a. Thirty-nine municipalities in those three counties—including twenty-one

[8] *See 8200 Realty Corp.*, 27 N.Y.2d at 129; *Somerset-Wilshire Apartments*, 304 F. Supp. at 274.

cities, towns, and villages in Westchester County—have done so.[9]

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 Higgins*, 83 N.Y.2d at 165. 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.

In addition, the Second Circuit rejected the argument that the RSL's rent restrictions effected unconstitutional takings by purportedly depriving some landlords of reasonable returns. *See Dinkins*, 5 F.3d 591 at 594–95.

In 1993, the state legislature amended the RSL to permit the deregulation of high-rent apartments that either became vacant or housed high-income tenants. *See* 1993 N.Y. Laws, ch. 253, *discussed in Roberts v. Tishman Speyer Props. L.P.*, 13 N.Y.3d 270, 280–81 (2009). These deregulatory mechanisms were more limited than the blanket "vacancy decontrol" in place

[9] *See* Office of Rent Administration (ORA), https://hcr.ny.gov/office-rent-administration-ora (last visited Sept. 9, 2024).

from 1971 to 1974. *Cf. La Guardia*, 53 N.Y.2d at 73–74. Over the ensuing decades, the State continued adjusting the permissible rent increases for improvements, thresholds for deregulation of an apartment, and bases for converting apartments or buildings to non-rental use. *See* Pet. App. 91a–92a. The RSL's core pillars—limiting rent increases and the grounds for eviction or non-renewal—have remained in place.

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. 25a–26a, 105a, 107a; *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 further restricted landlords' ability to evict tenants or decline lease renewals to recover apartments for the landlord's personal use. Pet. App. 24a–25a. The HSTPA also permits municipalities statewide that are experiencing a housing emergency to opt into the RSL's protections. Pet. App. 25a–26a.

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.[10] *Cmty. Hous.*, 59 F.4th at 555. 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. *Id.* at 546. In recent years, approximately 175,000 New York City 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.[11] *See* N.Y.C. Admin. Code § 26-504(b);

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[10] As of March 2023, the RSL also protected tenants in more than 24,000 apartments in Westchester County and more than 8,000 apartments in Rockland and Nassau Counties. *See* DHCR Office Rent Admin., *2023 Annual Report* 5 (2024), *available at* https://hcr.ny.gov/system/files/documents/2024/01/ora-rent-annual-report-231229.pdf; *see also* Pet. App. 124a (alleging that the RSL "covers approximately 25,000 rental apartments in Westchester County").

[11] 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.

N.Y. Unconsol. Laws §§ 8623, 8625.[12] The New York City Council last declared such an emergency in March 2024. *See* N.Y.C. Admin. Code §§ 26-501, 26-502. Absent further legislative action, that emergency declaration will expire on April 1, 2027. *Id.* § 26-520; *see also* N.Y. Unconsol. Laws § 8603 (requiring a new determination of emergency at least every three years following a survey of the supply of housing accommodations). In addition, the emergency "must be declared at an end once the vacancy rate … exceeds five percent." N.Y. Unconsol. Laws § 8623.

The RSL established a Rent Guidelines Board ("RGB") for New York City, which 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.[13] *See* Pet. App. 23a–24a; *Cmty. Hous.*, 59 F.4th at 545 (citing N.Y.C. Admin. Code § 26-510(a)). The RGB must, when making its

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[12] Although Petitioners have alleged that all "the properties that are the subject of this action are located … in Westchester County," Pet. App. 129a, all of the "[r]elevant [p]rovisions of New York [s]tatutes and [r]egulations" that Petitioners included in their Appendix D apply only to New York City, *see* Pet. App. 240a–70a. The relevant ETPA statutes and regulations that govern rent stabilization in Westchester County and elsewhere are cited herein.

[13] 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* Pet. App. 24, 152–53; N.Y. Unconsol. Laws § 8624(a).

decision, 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. *Cmty. Hous.*, 59 F.4th at 545 (citing N.Y.C. Admin. Code § 26-510(b)).

Consistent with the RSL, a landlord generally may charge rents up to the RGB-set maximum;[14] may raise rents due to improvements; may apply for hardship exemptions from rent limits 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); 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

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[14] Since the 2019 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).

unsatisfactory behavior, 9 N.Y.C.R.R. § 2524.3. Without DHCR's approval, a landlord who is a natural person may recover one apartment for the personal use of the landlord or her immediate family upon a showing of immediate and compelling necessity. N.Y.C. Admin. Code § 26-511(c)(9)(b); N.Y. Unconsol. Laws § 8630(a). Any landlord also 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 or to demolish the building. *See* 9 N.Y.C.R.R. § 2524.5.

The RSL does not prevent an owner from selling a regulated building. Although other non-RSL provisions of New York law place conditions on the conversion of residential buildings to co-op or condo ownership, *see* N.Y. Gen. Bus. Law § 352-eeee (New York City); *id.* § 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 December 10, 2019,[15] Petitioners filed suit in the Southern District of New York, alleging that the RSL, as amended by the HSTPA, **(1)** violates substantive due process, **(2)** effects a *per se* physical taking, **(3)** effects a regulatory taking, and **(4)** violates the

[15] Although Petitioners' complaint is dated October 30, 2019, Pet. App. 239a, it was filed on December 10, 2019.

Contracts Clause of the U.S. Constitution. *See* Pet. App. 230a–38a; *see also* Pet. App. 26a (noting that Petitioners "present[ed] four legal claims through ten causes of action"). Among other remedies, Petitioners sought the nullification of the HSTPA in its entirety. *See* Pet. App. 26a, 238a–39a.

The district court on September 14, 2021, granted Respondents' motions to dismiss all of Petitioners' claims. Pet. App. 121a.

First, the district court held that Petitioners doomed their physical-taking claim by admitting in their briefing below "that they 'do not allege a physical encroachment.'" Pet. App. 57a n.14 (citing Pls.' Mem. Law Opp'n Mots. Dismiss 15, No. 19-cv-11285 (S.D.N.Y. Aug. 13, 2020), ECF No. 81). The district court noted that Petitioners "do not object to the physical presence of tenants, instead they object to the financial terms of the tenants' occupation." Pet. App. 63a (citing Pet. App. 201a ¶ 105 (alleging the HSTPA effects a physical taking because it "has eliminated almost every avenue that allowed a transition from regulation to free market").

Second, the district court held that Petitioners failed to plead that the RSL effects a regulatory taking under the *Penn Central* standard either on its face or as applied to any Petitioner's property. *See id.* at 80a–96a. Importantly, the district court held that Petitioners' "as-applied regulatory taking claims are not ripe because the property owners have not tried to take

advantage of available hardship exemptions" to rent limits. Pet. App. 95a.

Third, the district court held that Petitioners could not "invoke the substantive due process doctrine to circumvent the requirements of takings claim." Pet. App. 101a (citing *Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envtl. Prot.,* 560 U.S. 702 (2010)). Even on the merits, the district court concluded that Petitioners' due-process claim failed under rational-basis review. Pet. App. 102a.

Fourth, the district court held that Petitioners failed to state a claim under the Contracts Clause "because their claims are based on future, rather than existing, contracts." Pet. App. 114a.

The district court also held that the State of New York and DHCR enjoyed sovereign immunity from suit, Pet. App. 42a, and that the two property-manager Petitioners (Property Management Associates and Nilsen Management Co., Inc.) and the individual Petitioner (Lisa DeRosa) who is a limited partner of one of the corporate landlord Petitioners lacked Article III standing, Pet. App. 46a, 48a.

Although the district court's dismissal was without prejudice and with leave to amend, Pet. App. 121a, Petitioners declined to amend their complaint and asked the court to deem its decision final, No. 19-cv-11285 (S.D.N.Y. Oct. 7, 2021), ECF No. 102.

D. Second Circuit Proceedings and the Instant Petition

Petitioners appealed, and the Second Circuit affirmed in a summary order noting that the "majority of the issues" raised by Petitioners "are controlled by" the Second Circuit's earlier decisions in *Community Housing* and *74 Pinehurst*. Pet. App. 5a.

First, 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.[16] Pet. App. 6a–8a, 9a–10a.

Second, the Court of Appeals held that Petitioners, like those in *74 Pinehurst*, had failed to adequately allege that the RSL effects as-applied physical takings, as required under this Court's decision in *Yee v. City of Escondido*, 503 U.S. 519 (1992). *See* Pet. App. 8a. The court reasoned that Petitioners' failure to attempt to use options available under the RSL to evict tenants or decline to renew leases made it impossible to assess Petitioners' as-applied claims. *Id.*

Third, the Court of Appeals held, as it had in *74 Pinehurst*, that Petitioners' failure to seek available hardship exemptions from rent limits left their as-

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[16] The Court of Appeals also held that Petitioners' "claims that the RSL effects a *per se* categorical taking" pursuant to *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), were "completely devoid of merit." Pet. App. 9a n.2.

applied regulatory-taking claims unripe. Pet. App. 10a. The court rejected Petitioners' argument that applying for hardship exemptions would be futile. It 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. Pet. App. 10a–12a.

Fourth, the Court of Appeals held that Petitioners failed to plead any interference with an existing, rather than future, contract, as required to state a claim for violation of the Contracts Clause. Pet. App. 13a.

Fifth, the Court of Appeals agreed with the district court that Petitioners impermissibly dressed up their Takings Clause claim under the guise of substantive due process. The court further held that, even on the merits, Petitioners' due-process claim failed to overcome rational-basis review. Pet. App. 14a.

The Court of Appeals also affirmed the district court's sovereign immunity determination, Pet. App. 15a–16a, and did not disturb the district court's rulings that Petitioner DeRosa lacks Article III standing to challenge the RSL.[17]

Petitioners seek this Court's review as to all of the Second Circuit's merits determinations. Petitioners do

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[17] Petitioners expressly declined to appeal the district court's dismissal of Property Management Associates and Nilsen Management Co., Inc. for lack of Article III standing. *See* Appellants' Br. 9, No. 21-2526 (2d Cir. Jan. 13, 2022), ECF No. 61.

not appear to seek review of the Second Circuit's sovereign immunity and standing determinations.

REASONS FOR DENYING THE PETITION

Petitioners argue that the RSL's regulation of the bases on which landlords may evict rent-stabilized tenants or decline to renew their leases effects, facially and as applied to them, *per se* physical takings under *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063 (2021), *Yee v. City of Escondido*, 503 U.S. 519 (1992), and *Heights Apartments, LLC v. Walz*, 30 F.4th 720 (8th Cir. 2022). Because the decision below is consistent with *Cedar Point*, is required by *Yee*, and does not conflict with the Eighth Circuit's decision in *Heights Apartments* or any other circuit precedent, review is unwarranted.

Petitioners further argue that the decision below erred in affirming the dismissal of their claims for regulatory takings and violations of substantive due process and the Contracts Clause. Because mere error correction does not justify this Court's review, and in any event the Second Circuit faithfully applied this Court's precedents, review is unwarranted.

Moreover, like *Community Housing*, *74 Pinehurst*, and *335-7 LLC*, this case is an ill-suited vehicle to address any constitutional issues purportedly raised by the RSL. Petitioners seek overbroad relief invalidating New York's entire rent-stabilization regime based on a handful of provisions and without identifying any concrete and particularized injury fairly traceable to

any of the RSL's provisions. Their facial challenges conflate several provisions and fail to establish that there is no circumstance under which any of those provisions would be valid. Petitioners lack standing to challenge provisions of the RSL, and their claims are unripe because they have not attempted to use the RSL's available options for relief.

Petitioners' effort to destroy a set of statutes and regulations 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.[18]

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

The Second Circuit held, Pet. App. 6a–7a, that Petitioners' facial physical-taking claim is foreclosed by *Community Housing*, which held that no provision of the RSL either compels a physical occupation or compels a landlord to refrain in perpetuity from terminating a tenancy, 59 F.4th at 551–52. The Second Circuit further held, Pet. App. 8a, that Petitioners' as-applied physical-taking claim is foreclosed by *74 Pinehurst*, which held that landlords could not prevail where they had not "exhausted all the mechanisms contemplated by the RSL that would allow a landlord to evict

[18] On April 20, 2024, for example, the state legislature doubled, and in some cases more than tripled, landlords' recoverable costs for apartment improvements. *See* 2024 N.Y. Laws, ch. 56, part FF, § 1.

current tenants," 59 F.4th at 564. The decision below does not create a conflict with any other circuits, and it is correct.

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

For their physical-taking claim, Petitioners make a passing effort to try to manufacture a split with only one other circuit. They argue that the Eighth Circuit's decision in *Heights Apartments, LLC v. Walz*, 30 F.4th 720 (8th Cir. 2022), which "applied *Cedar Point* to uphold a physical taking claim based upon an order imposing a moratorium on residential evictions during the COVID-19 pandemic," conflicts with the decision below. Pet. 15. Petitioners are wrong.

Although the Eighth Circuit in *Heights* upheld a physical-taking claim, the different outcomes do not reflect the existence of a conflict among the circuits, but rather the vast differences between the laws at issue. *Heights* concerned a moratorium banning virtually all evictions—including for rent non-payment or other material lease breaches—with no end date. *Heights*, 30 F.4th at 725. The Eighth Circuit held that the indefinite moratorium effected a physical taking by depriving landlords of their "right to exclude existing tenants without compensation." *Id.* at 733.

The RSL imposes no such eviction ban. 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 decline to renew a lease and evict a holdover tenant **(1)** 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); 9 N.Y.C.R.R. § 2524.4(a); **(2)** if the apartment is not the tenant's primary residence, 9 N.Y.C.R.R. § 2524.4(c); **(3)** to withdraw an apartment from the rental market for "use in connection with a business which he or she owns and operates," *id.* § 2524.5(a)(1)(i); **(3)** to withdraw an apartment from the rental market because of a safety hazard that would cost more than the structure's assessed value to repair, *id.* § 2524.5(a)(1)(ii); **(4)** to demolish a building (with payment of relocation expenses), *id.* § 2524.5(a)(2); or **(5)** to convert (through sale) a building to co-ops or condos with purchase agreements from at least fifty-one percent of tenants, HSTPA Part N (codified at N.Y. Gen. Bus. L. § 352-eeee). And a landlord may 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 government may not force a landlord to permit a tenant to indefinitely occupy a space rent-free or after a tenant has materially violated the terms of their lease. The Eighth Circuit concluded the law at issue in *Heights* was categorically different from the regulations of landlord-tenant relationships, like the RSL, that have long been permitted by this Court's precedent. Accordingly, a district court in the Eighth Circuit subsequently upheld a rent-stabilization ordinance similar

to the RSL based on the reasoning in *Community Housing*, notwithstanding the status of *Heights* as binding precedent. *See Woodstone Ltd. P'ship v. City of Saint Paul*, 674 F. Supp. 3d 571, 600 (D. Minn. 2023). 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*, 503 U.S. at 527 (emphasis in original). No landlord is compelled by the RSL to offer a vacant unit for rent, and Petitioners concede that some landlords "keep units vacant." Pet. 28. Petitioners also concede, as they did below, that they "are not alleging an 'encroachment'" caused by the RSL. Pet. 20; *see also* Pet. App. 57a n.14 (noting that Petitioners represented to the district court "that they 'do not allege a physical encroachment'" (quoting Petitioners' brief in opposition to the motions to dismiss)).[19] The decision below thus correctly affirmed the dismissal of Petitioners' physical-taking claims.

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[19] Petitioners contend that the RSL's "restrictions are the 'equivalent' of a physical encroachment" because the law limits rent increases and grounds for eviction. Pet. 20. As the district court correctly noted, this "misstate[s] the law regarding physical takings." Pet. App. 57a n.14. "When the government physically acquires private property for a public use, the Takings Clause imposes a clear and categorical obligation to provide the owner with just compensation." *Cedar Point*, 594 U.S. at 147. "When the

Even setting aside Petitioners' fatal concession, the Second Circuit correctly affirmed the dismissal of Petitioners' physical-taking claims.

The Second Circuit correctly held that, as in *Community Housing*, "no provision of the RSL effects, facially, a physical occupation of [Petitioners'] properties." Pet. App. 7a (quoting *Cmty. Hous.*, 59 F.4th at 551). Petitioners argue that the Second Circuit erred in applying the "no set of circumstances" standard from *United States v. Salerno*, 481 U.S. 739, 745 (1987), which Petitioners contend was "overturned" by other cases.[20] Pet. 14; *see also* Pet. 18; Pet. App. 7a. But this Court has repeatedly reaffirmed the applicability of *Salerno*'s standard to non-First Amendment facial challenges. *E.g.*, *Moody v. NetChoice, LLC*, No. 22-277, 2024 WL 3237685, at *8 (U.S. July 1, 2024); *United States v. Rahimi*, No. 22-915, 2024 WL 3074728, at *6 (U.S. June 21, 2024).

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government, rather than appropriating private property for itself or a third party, instead imposes regulations that restrict an owner's ability to use his own property, a different standard applies." *Id.* at 148.

[20] Petitioners argue that the proper standard for a facial claim is set forth in *City of Los Angeles v. Patel,* 576 U.S. 409 (2015), which admonished courts to consider "only applications of the statute in which it actually authorizes or prohibits conduct." Pet. 15 (quoting *Patel*, 576 U.S. at 418). As the Second Circuit correctly held in *Community Housing*, however, *Patel* "only clarified the scope of *Salerno*'s standard for facial challenges. It did not reject or relax the *Salerno* standard." 59 F.4th at 549.

The Second Circuit also correctly held that Petitioners' as-applied claims are unripe because Petitioners have not "alleged that they have exhausted all the mechanisms contemplated by the RSL that would allow a landlord to evict current tenants." Pet. App. 8a (quoting *74 Pinehurst*, 59 F.4th at 564). As the district court correctly noted, Petitioners "do not object to the physical presence of tenants, instead they object to the financial terms of the tenants' occupation." Pet. App. 63a (citing Pet. App. 201a ¶ 105 (alleging the HSTPA effects a physical taking because it "has eliminated almost every avenue that allowed a transition from regulation to free market"). But this Court unequivocally held in *Yee* that, "[w]hen a landowner decides to rent his land to tenants, the government may place ceilings on the rents the landowner can charge or require the landowner to accept tenants he does not like without automatically having to pay compensation." 503 U.S. at 529 (citations omitted); *see also Pennell v. City of San Jose*, 485 U.S. 1, 12 n.6 (1988) (reiterating "that 'statutes regulating the economic relations of landlords and tenants are not *per se* takings'" (quoting *FCC v. Fla. Power Corp.*, 480 U.S. 245, 252 (1987))).

Petitioners contend that the decision below contravened *Cedar Point*. *See* Pet. 8–13. But *Cedar Point* "evaluated a regulation granting labor organizations the 'right to take access' to an agricultural employer's property for up to 120 days a year to solicit support for unionization." *Cmty. Hous.*, 59 F.4th at 551 (quoting *Cedar Point*, 141 S. Ct. at 2069). Such "regulations granting a right to invade property closed to the

public" are "readily distinguishable" from regulations—like the RSL—limiting "how a business generally open to the public may treat individuals on the premises." *Cedar Point*, 141 S. Ct. at 2077. Whereas labor organizers were never invited onto the employer's property in *Cedar Point*, the entire point of renting out a property is to invite tenant occupation.[21]

Petitioners argue that the decision below "misconstrued *Yee*," which Petitioners contend "confirms that the HSTPA effect physical takings." Pet. 10. But *Yee* rejected a physical-taking claim based on the same argument that Petitioners make here: "that the [law] amounts to compelled physical occupation because it deprives petitioners of the ability to choose their incoming tenants." *Yee*, 503 U.S. at 530–31; *cf.* Pet. 2 ("The issues are whether the HSTPA strips landlords' Constitutional rights by eliminating owners' rights to select tenants."). "Because they voluntarily open their property to occupation by others, petitioners cannot assert a per se right to compensation based on their

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[21] Petitioners mistakenly state that "[t]he Second Circuit distinguished *Cedar Point* based on [*PruneYard*] *Shopping Center v.* [*Robins*], 447 U.S. 74 (1980)," Pet. 9, but neither the decision below nor *Community Housing* or *74 Pinehurst* cited *PruneYard*. In any event, as in *PruneYard*, Petitioners cannot claim a taking based on the presence of persons they invited to occupy their properties, when Petitioners have lawful means to remove them. Petitioners contend that "[t]he selection of tenants under the HSTPA is not controlled by the owner," Pet. 9, but as noted by the district court, Petitioners "ignore the many protections afforded to landlords by the HSTPA and prior incarnations of the law to investigate potential tenants," Pet. App. 72a n.21.

inability to exclude particular individuals." *Yee*, 503 U.S. at 531 (citing *Heart of Atlanta Motel, Inc. v. United States*, 379 U.S. 241, 261 (1964)).

Petitioners contend that this is the "different case" contemplated by *Yee* because the RSL purportedly "compel[s] a landowner over objection to rent his property or to refrain in perpetuity from terminating a tenancy." Pet. 10–11 (quoting *Yee*, 503 U.S. at 528). But in the very next paragraph they concede that the RSL "'sets forth several grounds on which a landlord may terminate a tenancy' – such as 'failing to pay rent, creating a nuisance, violating provisions of the lease, or using the property for illegal purposes.'" Pet. 11 (apparently referencing Pet. App. 8a).[22]

Petitioners object to the RSL's restrictions on individual owners' ability to reclaim apartments, through eviction or non-renewal, for "personal use." Pet. 8.[23] As the Second Circuit correctly held, however, none of these restrictions "involve unconditional

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[22] Petitioners cite Pet. App. 19a, but the decision below ends at Pet. App. 16a. Petitioners also slightly misquote the relevant portion of the decision below, which states that the RSL "sets forth several bases on which a landlord may terminate a *tenant's lease*, such as for failing to pay rent, creating a nuisance, violating *the lease*, or using the property for illegal purposes." Pet. App. 8a (quoting *74 Pinehurst*, 59 F.4th at 563) (emphasis added).

[23] Petitioners make a passing reference to New York Real Property Law § 232-c, *see* Pet. 7 (in subheading I.A.1), but section 232-c is inapposite. It concerns the legal effects of a tenant's holding over after the expiration of a tenancy longer than one month, as well as the landlord's acceptance of subsequent rent.

requirements imposed by the legislature." Pet. App. 7a (quoting *Cmty. Hous.*, 59 F.4th at 552). They are instead "provisions that must be adhered to 'when certain conditions are met.'" *Id.* (quoting *Cmty. Hous.*, 59 F.4th at 552). In any event, all of the landlord Petitioners are corporate entities ineligible for the personal-use exemption, *see* N.Y.C. Admin. Code § 26-511(c)(9)(b); N.Y. Unconsol. Laws § 8630(a), so they lack standing to challenge it, *see infra* p. 34.

Petitioners also take issue with the RSL's requirements that landlords offer tenants and their lawful successors renewal leases except as permitted by law. *See* Pet. 12. But this Court has upheld post-lease eviction restrictions for more than a century, *e.g.*, *Edgar A. Levy Leasing Co.*, 258 U.S. at 249–50; *Bowles*, 321 U.S. at 517, and the RSL's successorship rules were upheld decades ago, *Higgins*, 83 N.Y.2d at 165, *cert denied*, 512 U.S. 1213.

Petitioners cite *Horne v. Department of Agriculture,* 576 U.S. 350 (2015), for the proposition that "a property owner's decision to participate in a particular market" does not "absolve the government of takings liability." Pet. 12. This argument fails because, as the district court noted, "no physical taking has occurred in the first place." Pet. App. 61a (citation omitted).

II. The Second Circuit's Regulatory-Taking Analysis Is Correct and Does Not Warrant Review

Unable to conjure a circuit split concerning regulatory takings, Petitioners argue that the decision below is incorrect. *See* Pet. 17–27. But mere error correction is not among the "compelling reasons" for granting certiorari. Sup. Ct. R. 10. In any event, the decision below faithfully applied this Court's regulatory-taking precedents.[24]

First, the Second Circuit correctly held that, as in *Community Housing*, Petitioners "have not shown that, for all affected property holders, the economic impacts are universally negative and that investment-backed expectations were subverted" by the RSL, as required to plead a facial claim under *Penn Central*. Pet. App. 10a.

Petitioners' facial challenge to the RSL is especially unsuited for adjudication by this Court. Petitioners cannot surmount *Salerno*'s "no set of circumstances" burden because, as set forth *supra*, pp. 11–12, 21–26, there are abundant circumstances in which the RSL does not even colorably raise constitutional

[24] Petitioners spend much of their regulatory-taking argument citing inapposite physical-taking decisions such as *Yee*, *Loretto*, *Cedar Point*, *Horne*, *Kelo v. City. of New London,* 545 U.S. 469 (2005), *Kaiser Aetna v. United States,* 444 U.S. 164 (1979), and *Hodel v. Virginia Surface Mining & Reclamation Association, Inc.,* 452 U.S. 264 (1981). *See* Pet. 18–27.

questions. Nor have Petitioners 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. 11a–12a. With a statute as nuanced and complex as the RSL, the broad facial challenge presented by Petitioners creates a burden they cannot meet and would require this Court to exhaustively review every application of the RSL, rendering this case a poor and unworkable vehicle for review of any constitutional question.

Such an outcome makes sense. Facial challenges are a tool to ensure that lawmakers do not over-generalize in ways that grossly exceed the bounds of their authority; the RSL is a well-considered, detailed regulatory scheme that implicates a variety of state laws that evolved through the political process since World War I to respond with specificity to shifting municipal conditions. *See Cmty. Hous.*, 59 F.4th at 544–45. As set forth *supra*, pp. 3–12, rent stabilization in New York is governed by a patchwork of statutes and regulations 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. Sometimes those changes have favored landlords; other times they have favored tenants. *See, e.g.*, Pet. App. 61a ("In the 1970s, the threshold [of tenant approval for [condo/co-op] conversion was 35%, and prior to the

HSTPA it was 15%.");[25] Pet. App. 119a ("By limiting [preferential-rent] increases to the approved percentage, the HSTPA merely restores the law as it existed prior to 2003."). Petitioners' 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).

Second, the decision below correctly held that, as in *74 Pinehurst*, Petitioners' failure to seek available hardship exemptions from rent limits left any as-applied claims unripe for judicial review.[26] *See* Pet. App. 10a–11a. Petitioners do not address this jurisdictional defect at all.

Third, even assuming that Petitioners' as-applied claims were ripe, the decision below correctly held that Petitioners failed to adequately plead facts to

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[25] Petitioners argue that "[t]he change in the percentage required to convert to a condominium or cooperative from 15% of purchasers to 51%" on its face constitutes "an *ipso-facto* taking." Pet. 21. But Petitioners cite no legal authority for such a sweeping proposition, nor could they.

[26] Petitioners state, as they represented to the district court, that "the essence of the[ir] 'as applied' claim is the same as the[ir] 'facial' claim." Pet. 18; *see also* Pet. App. 84a n.28 ("BRI Plaintiffs assert that the BRI Complaint is at bottom a facial challenge, but that the BRI Complaint should be construed as raising an as-applied challenge because the two are 'the same' given the 'HSTPA's restrictive effect upon each of the [BRI] Plaintiffs and their members.'"). The district court thus aptly described Petitioners' as-applied challenge as "under-developed." Pet. App. 85a n.28.

satisfy the *Penn Central* standard. Pet. App. 11a–12a. Petitioners claim that they "outlined the loss of income as a result of various clauses of the HSTPA and the fact that the various means of securing increases in rents have been eliminated," but Petitioners do not identify any such allegations, citing merely to "Appx." Pet. 23.[27] Nor do Petitioners identify any specific investment-backed expectations any of them held that were disrupted by the RSL, relying instead on generalities and purportedly "self-evident" truths. Pet. 19. And Petitioner's arguments about the RSL's character, to the extent they may be distilled from their scattershot Petition, primarily rehash their meritless physical-taking arguments. *See* Pet. 19–27.

Petitioners argue that the RSL "flies in the face of" the rule proposed by Justice Scalia in his *Pennell* dissent, which they argue "can fill in gaps in constitutional protections left by the decision in *Penn Central*." Pet. 3, 17. But the *Pennell* majority reaffirmed states' "broad power to regulate … the landlord-tenant relationship," 485 U.S. at 12 n.6 (quoting *Loretto*, 458 U.S. at 440). And Justice Scalia's proposed test in *Pennell* was a means-ends test of the sort that a unanimous Court (including Justice Scalia) later held has

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[27] Petitioners' argument that they merely lost some potential rental income as a result of the HSTPA, *see* Pet. 26, defeats their claim for a categorical taking under *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992). The Second Circuit correctly described this claim as "completely devoid of merit." Pet. App. 9a n.2.

no place in the Takings Clause analysis. *See Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 542 (2005).[28]

III. The Second Circuit's Contracts Clause and Due Process Analyses Are Correct and Do Not Warrant Review

As with their regulatory-taking claims, Petitioners do not argue that the decision below created a split with any other circuits in its disposition of Petitioners' claims under the Contracts Clause and Due Process Clause. Instead, Petitioners devote just three paragraphs to arguing that the Second Circuit got the law wrong. They are mistaken.

First, the Second Circuit correctly held that Petitioners failed to allege any facts supporting an inference that they held existing contracts affected by the HSTPA. Pet. App. 13a; *see Ogden v. Saunders*, 25 U.S. 213, 327 (1827) (holding that a law "is out of [the Contracts Clause's] true meaning, if the law is made to operate on future contracts only").

Petitioners contend that the HSTPA impaired their existing leases by compelling mandatory

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[28] Petitioners repeatedly cite *Kelo*, Pet. 3, 7, 18, but *Kelo* concerned a city's exercise of eminent domain, 545 U.S. at 472, which is a textbook "physical appropriation[]," *Cedar Point*, 594 U.S. at 147–48. Moreover, in *Kelo* the fact of the taking was undisputed, and the only question presented was "whether the city's proposed disposition qualifie[d] as a 'public use' under the Takings Clause." *Kelo*, 545 U.S. at 472. Here, by contrast, no taking has occurred in the first place.

renewals (subject to the exceptions discussed *supra*, pp. 11–12) and preferential rents. Pet. 28. But they make no attempt to (and cannot) overcome the pleading deficiency identified by the Second Circuit: the absence of any allegations that any Petitioner "(1) held a pre-2019 lease (2) with a renewal option that was (3) renewed after 2019 and affected by the HSTPA." Pet. App. 13a.[29] Petitioners could have taken the district court's leave to amend and fill this hole in their complaint, but they chose not to. *See supra* p. 14.

Second, the Second Circuit correctly held that Petitioners had improperly dressed up their Takings Clause claims under the guise of substantive due process and, in any event, the RSL would withstand rational-basis review. Pet. App. 14a.

Petitioners appear to conflate the distinct Takings Clause and due-process analyses by citing (at 27) *Tyler v. Hennepin County*, 598 U.S. 631 (2023), which did not raise a due-process challenge and instead concerned "a classic taking in which the government directly appropriates private property for its own use," *id.* at 639 (quotation marks omitted).

In any event, Petitioners concede that rational-basis review governs their due-process claim. Pet. 27 (citing *Washington v. Glucksberg,* 521 U.S. 702, 728

[29] Under New York law, unless a lease agreement contains a renewal option, a "lease extension [is] a new agreement rather than a continuation of the old agreement." *Dime Sav. Bank of N.Y., FSB v. Montague St. Realty Assocs.*, 90 N.Y.2d 539, 543 (1997).

(1997)). They contend that the sole rationale for the law "is to provide affordable housing to low-income families," *id.*, but as the Second Circuit noted, "the legislature enacted the challenged regulations for the purpose of permitting low- and moderate-income people to reside in New York City and it is beyond dispute that neighborhood continuity and stability are valid bases for enacting a law," Pet. App 15a (cleaned up). Petitioners' "policy and efficacy disagreements with the legislature" do not permit "judges to second guess legislative judgment." *Id.* (quoting *Cmty. Hous.*, 59 F.4th at 557).

IV. This Case Is a Poor Vehicle to Address the Parameters of the Takings Clause

Petitioners lack standing to pursue the overbroad relief they seek. Petitioners' complaint sought to enjoin the HSTPA in its entirety, *see* Pet. App. 238a–39a, but the HSTPA comprised fifteen parts, only some of which concerned rent-stabilization laws affecting Westchester County landlords *see generally* 2019 N.Y. Laws, ch. 36. "[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 HSTPA. *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 also lack standing to challenge the RSL's successorship rights, *see* Pet. 4, 12, because those rights were promulgated in the 1980s and were

not affected by the HSTPA, *see supra* p. 7. Petitioners' concerns about successorship thus would not be redressed by the relief that they seek. *E.g.*, *Haaland v. Brackeen*, 599 U.S. 255, 291–93 (2023).

Petitioners' arguments about the HSTPA's restrictions on recovering apartments for personal use suffer from a similar redressability defect. *See* Pet. 20. Only landlords who are natural persons may invoke the personal-use ground for non-renewal. *Supra* p. 12. Because none of the Petitioner landlords is a natural person, enlarging the number of apartments such landlords may recover for personal use or relaxing the showing required to do so would not affect Petitioners at all. Although the personal-use provision does not extend to corporate landlords like Petitioners, *see* Pet. 20, they retain other lawful means for recovering possession of their properties, *see supra* pp. 11–12.

Petitioners' "sweeping assertions" about the "cumulative effects" of the HSTPA are insufficiently particularized to establish standing. Pet. App. 84a. For example, Petitioners alleged that the HSTPA "mandates that owners offer below-market rents," Pet. app. 176a ¶ 76; "significantly reduced the value of regulated properties, Pet. App. 178a ¶ 79; "virtually eliminated" landlords' "ability to make a reasonable return on investment," Pet. App. 199a ¶ 102; permits a successor tenant to "renew his or her lease at below market rates," Pet. App. 203a ¶ 107; and "reduced the market value of regulated properties in some cases by over 50%," Pet. App. 216a ¶ 128. None of these vague, generalized allegations rises to the level of a concrete

injury but instead provides only speculation. *See* Pet. App. 11a; *DaimlerChrysler*, 547 U.S. at 346. At most, Petitioners make general claims about the effect of the RSL on market conditions, without specific details of the law's effect on the value of their own properties.

Petitioners contend that "[i]t is self-evident that when the owner cannot convert to a cooperative corporation because of the 51 % rule, when capital improvement increases are limited, or the retention of roommates is permanent the investment is no longer profitable and fails constitutional scrutiny." Pet. 19. But any unprofitability cannot be traced to the statute, as opposed to Petitioner's failure to properly follow the statutory process, because Petitioners do not allege that any of them has attempted a condo or co-op conversion, sought a hardship exemption from rent limits, or attempted to evict a successor tenant. *See Clapper v. Amnesty Int'l USA*, 568 U.S. 398, 418 (2013).

Petitioners' claims are also unripe, because Petitioners may still obtain relief on their own. Petitioners could have attempted (and still may attempt) "to use all available methods to either exit the rental market or evict tenants." Pet. App. 8a. And Petitioners could have applied (and still may apply) for hardship exemptions under a variety of provisions of state and city law. *See supra* p. 11; Pet. App. 10a. Under these circumstances, Petitioners' as-applied claims are unripe and inappropriate for judicial review, particularly by this Court.

CONCLUSION

The Petition for a writ of certiorari should be denied.

Respectfully submitted,

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