



WORKING PAPER

Laboratories of Regulation: Understanding the Diversity of Rent Regulation Laws

Vicki Been, Ingrid Gould Ellen, and Sophia House | March 18, 2019

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Vicki Been

Ingrid Gould Ellen

Sophia House

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I. Introduction

Debates about rent regulation are not known for their nuance. The world tends to divide into fierce opponents and strong supporters. Moreover, debates rarely engage with the details of local ordinances, even though those details may significantly affect outcomes for tenants, landlords, and broader housing markets. In this paper, we catalog the multiplicity of choices that local policymakers must make in enacting and implementing rent regulation ordinances and consider the implications those choices may have for tenant protections and broader market outcomes. We then highlight the wide variety of regimes that jurisdictions with rent regulation have adopted in practice. We end with a call for new empirical research to study the effects of different regulatory features.

Overarching Goals of Rent Regulation

State and local governments have authorized or adopted rent regulation to serve a number of different goals. One obvious objective of rent regulation is to protect existing tenants from rent increases that would make their housing unaffordable. New York City puts that goal most starkly, justifying its program as necessary to “prevent exactions of unjust, unreasonable and oppressive rents and rental agreements and to forestall profiteering, speculation and other disruptive practices tending to produce threats to the public health, safety and general welfare.”¹ Similarly, Oakland, California includes in its purposes “providing relief to residential tenants in Oakland by limiting rent increases for existing tenants.”² Washington, D.C. lists “protect[ing] low- and moderate-income tenants from the erosion of their income from increased housing costs” as the first of its

¹ N.Y.S. Admin. Code § 26.501; *re’affd*, April 1, 2018 (§ 26.502)).

² Oakland Mun. Code §8.22.010.

five objectives.³ Washington is unusual in specifying that its goal is to protect tenants with low- and moderate-incomes.⁴

Because that basic goal of protecting existing tenants can quickly be undermined if landlords can arbitrarily evict tenants who enjoy the protections of rent regulation or skimp on the maintenance of the apartment, rent regulation programs often also aim to prevent evictions, harassment, or decreases in services or maintenance. New York City's Rent Guidelines Board lists protecting "habitability and security of tenure" as one of the goals of the City's program.⁵ Washington's rent regulation statute includes as one objective "continu[ing] to improve the administrative machinery for the resolution of disputes and controversies between housing providers and tenants."⁶ Union City, New Jersey explains its program by noting that because residents fear eviction without just cause, they are reluctant to complain about exorbitant rent increases and the deterioration of housing.⁷

A number of jurisdictions articulate a broader intent to avoid or alleviate a crisis in housing affordability. San Francisco's Rent Board describes the purpose of its program as "alleviat[ing] the city's housing crisis."⁸ Takoma Park, Maryland's rent regulation website describes the program as "designed to preserve the city's affordable housing

³ D.C. Code § 42-3501.02.

⁴ D.C. Code § 42-3501.02. Union City, New Jersey states that the purpose of its rent regulation ordinance "is to maintain rental apartments that are affordable to mid and lower income residents of the City." City of Union Ordinance §334-1(F).

⁵ According to the Rent Guidelines Board, the purpose is three-fold: (1) to "preserve the basic affordability of rental housing;" (2) to protect "habitability and security of tenure;" and (3) to provide "fair returns for affected owners." N.Y.C. Rent Guidelines Board, <https://www1.nyc.gov/assets/rentguidelinesboard/pdf/history/mainfeaturesofrs.pdf>.

⁶ D.C. Code § 42-3501.02.

⁷ City of Union City Ordinance 2017-22, §334-1(D).

⁸ City and County of S.F. Rent Board, <https://sfrb.org/mission-rent-board>.

stock.”⁹ The rent regulation ordinance of Union City, New Jersey states that “[u]nless residential rents of tenants are regulated and controlled, there will be an inevitable housing crisis that will inevitably lead to homelessness.”¹⁰

Other jurisdictions make a point of stating that the purposes of their program include “provid[ing] incentives for the construction of new rental units and the rehabilitation of vacant rental units”¹¹ or “encouraging rehabilitation of rental units” and “investment in new residential rental property.”¹² Some also specifically note the importance of allowing landlords subject to the regulation to make a “fair return,”¹³ “fair and adequate rents,”¹⁴ or a “reasonable rate of return on their investments.”¹⁵ Oakland states that its goals include “allowing efficient rental property owners the opportunity for both a fair return on their property and rental income sufficient to cover the increasing cost of repairs, maintenance, insurance, employee services, additional amenities, and other costs of operation.”¹⁶

Finally, some jurisdictions adopt rent regulation in part to preserve the diversity of their populations. Takoma Park, Maryland says that its rent regulations are designed in part to “maintain economic and ethnic diversity.”¹⁷ Union City, New Jersey justifies its rent regulation in part because “[i]t is in the public interest to have a cross section of

⁹City of Takoma Park Dep’t of Hous. and Cmty. Dev., <https://takomaparkmd.gov/government/housing-and-community-development/rental-housing/rent-stabilization/>.

¹⁰ City of Union City Ord. 2017-22 § 334-1(E)).

¹¹ D.C. Code § 42-3501.02.

¹² Oakland Mun. Code § 8.22.010

¹³ N.Y.C. Rent Guidelines Board, <https://www1.nyc.gov/assets/rentguidelinesboard/pdf/history/mainfeaturesofrs.pdf>.

¹⁴ S.F. Admin. Code § 37.1(b)(6).

¹⁵ Washington D.C. Code § 42-3501.02

¹⁶ Oakland Mun. Code § 8.22.010(C) & (D).

¹⁷ City of Takoma Park Dep’t of Hous. and Cmty. Dev., <https://takomaparkmd.gov/government/housing-and-community-development/rental-housing/rent-stabilization/>.

people residing in Union City across all socio-economic backgrounds.”¹⁸ Oakland defines the purpose of its rent adjustment program as “foster[ing] fair housing for a diverse population of renters.”¹⁹

In reality, however, some of these goals may be in tension. Protecting the affordability of the existing housing stock, for example, may discourage, rather than encourage, the construction of new rental housing; the continuing operation of rental properties as rentals; or adequate maintenance and rehabilitation of the rental stock. Protecting existing tenants may undermine, rather than preserve, the diversity of the population, depending upon how the incomes and race or ethnicity of the tenants whose buildings are rent regulated compare with those of the renters in unregulated buildings or those of newcomers who may have trouble securing a regulated apartment.

Studying how well rent regulation serves the goals jurisdictions articulate for their programs is challenging. Perhaps most fundamentally, rent regulation laws are relatively static, so there are few opportunities to examine the effects of a change in policy. Further, it is difficult to identify control groups when policies do change: the properties excluded within a jurisdiction are often idiosyncratic, and comparisons between jurisdictions are problematic because those that adopt changes to rent regulations may be experiencing very different market pressures than those that do not change, or do not have rent regulation programs. Even when plausible control groups exist, data on rents and tenant outcomes are difficult to come by. Finally, because of the variability in the extent and reach of regulations, we must be cautious in assuming that the evidence of the effects of rent regulations from one jurisdiction will generalize to another.

¹⁸ City of Union Ordinance 2017-22 § 334-1(D).

¹⁹ Oakland Rent Adjustment Program, <https://www.oaklandca.gov/topics/rent-adjustment-program>.

That said, the best evidence we have on the impacts of rent regulation suggests a trade-off among the goals jurisdictions articulate for their programs. Diamond, McQuade, and Qian²⁰ used uniquely comprehensive data to exploit an expansion of rent controls in San Francisco in 1994. The researchers found that while tenants in rent-regulated units enjoyed lower rents and on average, stayed in their homes longer, rent regulation prompted some landlords to demolish their units to make way for new construction or to convert them to other uses, leading to a reduction in rental supply, a stock that serves higher income individuals, and ultimately higher rents.²¹ Thus, while sitting tenants generally benefited, other renters and those wanting to move into the city encountered fewer units and higher rents. Further, they found that tenants who lived in areas with the highest rent appreciation and had only been at their current address for a few years were less likely to remain at their addresses than tenants in the control group of similar buildings not subject to the expansion of rent regulation.²²

Similarly, Brian Asquith²³ used an instrumental variable approach to study whether increases in housing prices in San Francisco led owners of rent regulated buildings or units to convert their properties to unregulated uses. He found that landlords respond to rising prices by withdrawing their units and buildings from the rent-regulated system, converting them to condominiums or other ownership forms, demolishing them, or occupying them as their own homes.²⁴ Further, he found that when the city tried to

²⁰ Rebecca Diamond et al., *The Effects of Rent Control Expansion on Tenants, Landlords, and Inequality: Evidence from San Francisco* (No. w24181), NAT'L BUREAU ECON. RESEARCH (2018).

²¹ *Id.* at 12.

²² *Id.* at 9.

²³ Brian Asquith, *Do Rent Increases Reduce the Housing Supply Under Rent Control? Evidence from Evictions in San Francisco* (2018). Available at SSRN: <https://ssrn.com/abstract=3165599> or <http://dx.doi.org/10.2139/ssrn.3165599>.

²⁴ *Id.* at 4, 26-27.

limit such conversions, landlords responded by taking more tenants to court for at-fault evictions.²⁵

Sims used the end of rent control after a ballot referendum in Massachusetts to study the effects of rent control in the Boston metropolitan area. He found that ending rent control had little effect on new construction in the years immediately following decontrol, but resulted in many units switching from owner to tenant occupancy, suggesting that rent control had encouraged owners to convert rental units to other uses to avoid rent regulation.²⁶ Sims found little evidence that the end of rent control was associated with a reduction in major maintenance problems such as plumbing and heating failures, but it was associated with a reduction in “chronic aesthetic” issues such as peeling paint, suggesting that rent control had discouraged maintenance of the regulated stock.²⁷

Accordingly, it can be difficult, if not impossible, to both protect existing tenants and ensure the affordability and quality of the housing stock. Whether a different combination of features and strategies might allow a program to achieve both sets of goals is worth considering, but first requires a detailed look at the design choices available.

²⁵ *Id.* at 28-29.

²⁶ Note that effects found are as a result of ending rent control and may not apply to the introduction or continuation of rent controls. David P. Sims, *Out of Control: What Can We Learn from the End of Massachusetts Rent Control?*, 61 J. URB. ECON. 129, 140-143 (2007).

²⁷ *Id.* at 143-144.

II. Features and Trade-Offs

While observers (both critics and advocates) tend to regard the adoption of rent regulation as a binary choice, in reality, policymakers must make a host of decisions when enacting rent regulations. Legislators must determine, for example: how broadly the program will apply; how annual increases will be determined; the circumstances under which landlords can increase rents above the standard; the rights of tenants in regulated units; when, or whether, units can be deregulated; and how the rents will be tracked and enforced. All of these choices involve difficult trade-offs.

The number of jurisdictions with rent regulations is dwarfed by the number without them. Only California, New York, New Jersey, Maryland, the District of Columbia, and, very recently, Oregon, have rent regulation programs. Thirty-six states expressly prohibit or preempt rent control, while nine others allow it in principle but have no rent-regulating jurisdictions.²⁸ Nevertheless, there is considerable diversity among the existing rent-regulation programs. This section explores the policy choices jurisdictions with rent regulations programs have made. The survey shows that a wide range of programs fall under the umbrella of “rent regulation,” and reveals that jurisdictions considering implementing new rent regulation programs have a diversity of models to choose from.

²⁸ Nat'l Multifamily Hous. Council, *Rent Control Laws by State* (March 13, 2019), <https://www.nmhc.org/research-insight/analysis-and-guidance/rent-control-laws-by-state/>.

A. *Breadth of program*

i. *Universe of regulated properties*

The first key decision is which properties to regulate. Casting a broader net clearly protects more sitting tenants, but at the risk of discouraging investment in new construction. Policymakers can restrict the scope of regulations by covering only those buildings built before a certain date, by exempting small or owner-occupied buildings, or by excluding high-rent units or high-income tenants from coverage. Jurisdictions designing and implementing rent regulations have made a variety of decisions about which homes to regulate. The proportion of all rental units that are rent-regulated varies considerably by city, from approximately 45% of rental units in New York City to 80% of multifamily units in Los Angeles.²⁹ These figures are not static but rather a function of any given program's mechanisms for entry to and exit from the regulated market. Additional units may become subject to regulation as a condition of participation for tax incentives or other programs designed to expand the supply of affordable or market rate housing.³⁰ The deregulation mechanisms explored later in this Part allow units to exit the regulated market.

Treatment of new rental construction: Regulating the rents charged in new buildings is particularly problematic, as such restrictions might discourage new rental construction. Further, the high cost of construction and the strong demand for housing in many cities means that unless new buildings are subsidized or built as part of an

²⁹ Note that in New York City, 44% of all units are rent-stabilized and 1% are subject to rent control. See City of L.A. Dep't of City Planning, Recommendation Report <https://planning.lacity.org/ordinances/docs/HomeSharing/StaffRept.pdf>; see also Selected Initial Findings of the 2017 New York City Housing and Vacancy Survey, <https://www1.nyc.gov/assets/hpd/downloads/pdf/about/2017-hvs-initial-findings.pdf>.

³⁰ In New York, for example, rent stabilization applies to buildings that receive J-51 and 421-a tax benefits. N.Y.S. Code § 2520.11.

inclusionary housing program, they will rarely result in homes affordable to low- and moderate-income renters, so regulating rents in new buildings will confer benefits on wealthier tenants in least need of protection.

Most systems do not cover new buildings, other than those accepting rent regulation as a condition for a benefit; the date that determines which existing units are covered is usually right before rent regulation legislation passed. The earliest of these is New York state, where rent stabilization does not apply to buildings built after 1974,³¹ while Oakland and Jersey City use 1983,³² and Oregon's recently passed statute exempts properties built in the last 15 years.³³

Other jurisdictions provide only an exemption period before new buildings enter the regulated market. Newark's rent regulation ordinance, for example, does not apply to newly constructed multiple dwellings for the lesser of 30 years or the amortization period for the initial mortgage loan.³⁴ Takoma Park, Maryland grants a much shorter exemption of only five years.³⁵ Jersey City grants exemptions only to new buildings located in designated "redevelopment areas," with the goal of encouraging the rehabilitation or replacement of substandard housing in existing communities.³⁶ The extent to which

³¹ See Emergency Tenant Protection Act ("EPTA") of 1974 (L. 1974, ch. 576, § 4, *as amended*).

³² Oakland Mun. Code § 8.22.030 and Jersey City Code of Ordinances § 260-1.

³³ Relating To Residential Tenancies and Declaring An Emergency, S.B. 608, Or. State Leg.

³⁴ City of Newark Dep't of Econ. and Hous. Dev., <https://www.newarknj.gov/departments/rentcontrol>.

³⁵ Takoma Park Mun. Code § 6.20 *et seq.*

³⁶ Jersey City Ord. § 260(A)(4) (exempting "Newly constructed dwellings with 25 or more dwelling units located within a redevelopment area as defined in Section 5 of the Redevelopment Agencies Law, N.J.S.A. 40:55C-5(o), for which the City Council has approved a redevelopment plan, in accordance with Section 17 of the Redevelopment Agencies Law, N.J.S.A. 40:55C-17."). The relevant section defines "redevelopment areas" as "previously developed portions of areas: (1) Delineated on the State Plan Policy Map (SPPM) as the Metropolitan Planning Area (PA1), Designated Centers, Cores or Nodes; (2) Designated as CAFRA Centers, Cores or Nodes; (3) Designated as Urban Enterprise Zones; and (4) Designated as Urban Coordinating Council Empowerment Neighborhoods." See also <https://www.njfuture.org/issues/development/redevelopment/> ("Redevelopment is reinvestment in neighborhoods and commercial areas to replace or repair previously developed buildings or plots of land that are in substandard condition or are no longer useful in their current state. Redevelopment sites can be

these exemption periods help to moderate the disincentive to build new homes is unclear. Even exempting new buildings entirely may not address the disincentive to investment if the market fears that the trigger will be moved forward with subsequent legislation.

Types of housing included: Jurisdictions may also choose to exempt small rental buildings. Many exclude single-family homes³⁷ or dwellings below a certain size. In New York City, rent stabilization applies only to buildings with six or more units; in Jersey City, it is four. Los Angeles differentiates between single-family homes occupying a single parcel (unregulated) and those that are two or more to a parcel (regulated).³⁸

The justification for such exemptions is that owners of small buildings generally have less market power over rents (unless they own a large number of small buildings) and should not be burdened with the administrative costs of regulation. Further, owners of small rental properties may find it easier to convert their apartments into condominiums if they find regulations to be burdensome. In studying the expansion of rent regulation in San Francisco to some buildings with fewer than five apartments, Diamond, McQuade and Qian³⁹ find that newly covered buildings were 8 percentage points more likely to convert to a condo or other form of for-sale unit than the small buildings that remained unregulated.

D.C. distinguishes between corporate and individual owners and the number of units owned rather than building size, exempting “rental units owned by a natural person

found in urban, suburban and rural locations, as well as on ‘brownfields’ that may be contaminated by a previous industrial use. Redevelopment is a core component of smart growth in that it promotes development in existing communities with infrastructure and away from critical environmental lands and resources.”)

³⁷ See, e.g., Oakland Mun. Code § 8.220.30, Jersey City Code of Ordinances § 260-1 and DC Official Code § 42-3502.05 (exemptions in ordinances).

³⁸ The ordinance thus applies to duplexes that have been converted to condominiums as well as garage conversions to residential occupancy. See Rent Stabilization Ordinance: L.A. Mun. Code § 151.00 *et seq.* California state law only allows jurisdictions to apply rent regulation to properties with two or more units.

³⁹ Diamond, *supra* note 19, at 19-20.

who owns no more than four rental units.”⁴⁰ Still other jurisdictions regulate based on whether the owner lives in the dwelling in question: Oakland’s ordinance, for instance, exempts two- or three-unit buildings in which the landlord has lived for at least two years.⁴¹

ii. *Tenant income qualifications*

One of the common aims of rent regulation programs is to provide affordable rental housing, a goal that is particularly challenging in the case of lower-income households.⁴² Moreover, there is a persistent public discomfort with wealthier households’ benefiting from rent regulation.⁴³ Despite this, we could find no jurisdictions that expressly condition the application of rent regulation on the tenant’s income. A number of arguments can be made for not targeting incomes: the high administrative costs of means testing;⁴⁴ the potential to expand political support for rent regulation programs by increasing the number of households with a stake in those programs;⁴⁵ the risk that landlords will simply avoid renting to lower-income households; and the greater

⁴⁰ D.C. Code § 42-3501.01 *et seq.*

⁴¹ Oakland Rent Adjustment Program, Oakland Mun.Code § 8.22.030.

⁴² In New York City, proportions of low income households in in rent stabilized housing are higher than in unregulated households and the proportions of rent burdened households are similar. See N.Y.C. Dep’t of Hous. Pres. and Dev., *Affordability of Rent Stabilized Units* <https://www1.nyc.gov/assets/hpd/downloads/pdf/about/rent-regulation-memo-2.pdf>

⁴³ See, e.g., Scott James, *How the Rich Get Richer, Rental Edition*, N.Y. TIMES, Feb. 17, 2012, <https://www.nytimes.com/2012/02/17/us/san-francisco-rent-control-and-unintended-consequences.html>; Peter D. Salins & Gerard Mildner, *Does Rent Control Help the Poor?*, City Journal, Winter 1991, <https://www.city-journal.org/html/does-rent-control-help-poor-12772.html>; Jeremiah Budin, *Millionaires Living in Rent-Stabilized Apartments*, CURBED NEW YORK, Apr. 30, 2014, <https://ny.curbed.com/2014/4/30/10107290/millionaires-living-in-rent-stabilized-apartments>; James Fanelli, *Rent-Stabilized Apartments Are Being Occupied by Millionaires*, Records Show, DNA INFO, Apr. 30, 2014, <https://www.dnainfo.com/new-york/2014/04/30/new-york-city/rent-stabilized-apartments-are-being-occupied-by-millionaires-records-show/>.

⁴⁴ Timothy Besley, *Means Testing Versus Universal Provision in Poverty Alleviation Programs*, ECONOMICA 119 (1990); Wim Van Oorschot, *Targeting welfare: On the Functions and Dysfunctions of Means Testing in Social Policy*, WORLD POVERTY: NEW POLICIES TO DEFEAT AN OLD ENEMY 171 (2002).

⁴⁵ See, e.g., Theda Skocpol, *Targeting Within Universalism: Politically Viable Policies to Combat Poverty in the United States*, in CHRISTOPHER JENCKS & PAUL E. PETERSON, THE URBAN UNDERCLASS (1991).

administrative ease of using proxies for wealth to limit the applicability of rent regulation (such as exemptions for single-family homes).⁴⁶

In 2018, a bill was introduced in the Illinois General Assembly to require means-tested rent regulation (and overturn the state’s ban on rent regulation). The provisions, which were eliminated from the version of the bill introduced in 2019,⁴⁷ called for regional rent control boards to set targeted rent caps for “Tier 1” households earning 60% or less of a county’s Area Median Income (AMI) and “Tier 2” households earning 120% of AMI or less.⁴⁸ The 2018 bill would also have provided an income tax credit for landlords renting to Tier 1 or Tier 2 households,⁴⁹ in an attempt to reduce the likelihood that such measures would otherwise disincentivize landlords from accepting low-income tenants. Creating such a granular means-testing scheme would require substantial administrative investment.

The state of New York balances the need to target benefits and the costs of administering means-testing by adopting a “high-rent, high-income” deregulation, through which a unit becomes deregulated if the income of the household occupying the unit exceeds \$200,000 for the two preceding years and the unit reaches a Deregulation

⁴⁶ See generally Lincoln Institute of Land Pol’y, *Property Tax Circuit Breakers: Fair and Cost-Effective Relief for Taxpayers* (2009). Some jurisdictions—including Maryland, New Jersey, and Indiana, provide benefits to low-income renters, such as renters’ tax credits, that are conditioned on income, but do not impose means testing in their rent regulation programs. Because such credits typically are administered through the income tax system, conditioning them on income is relatively easy. See Md. Dep’t of Assessments and Taxation, <https://dat.maryland.gov/realproperty/Pages/Renters'-Tax-Credits.aspx>; N.J. Dep’t of the Treasury, <https://www.state.nj.us/treasury/taxation/njit35.shtml>; Indiana Dep’t of Rev., <https://www.in.gov/dor/5863.htm#renters>.

⁴⁷ [http://ilga.gov/legislation/fulltext.asp?DocName=&SessionId=108&GA=101&DocTypeId=HB&DocNum=2192&GAID=15&LegID=117947&SpecSess=&Session=.](http://ilga.gov/legislation/fulltext.asp?DocName=&SessionId=108&GA=101&DocTypeId=HB&DocNum=2192&GAID=15&LegID=117947&SpecSess=&Session=)

⁴⁸ SB 3512,
[http://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=91&GA=100&DocTypeId=SB&DocNum=3512&GAID=14&LegID=111613&SpecSess=&Session=.](http://www.ilga.gov/legislation/fulltext.asp?DocName=&SessionId=91&GA=100&DocTypeId=SB&DocNum=3512&GAID=14&LegID=111613&SpecSess=&Session=)

⁴⁹ *Id.*

Rent Threshold (DRT).⁵⁰ To initiate the deregulation process, the owner of a regulated apartment must serve a tenant with an Income Certification Form, which requires the tenant to certify whether their household income exceeded \$200,000 in the two preceding years. If so, the owner may file an Owner’s Petition for Deregulation with the Division of Housing and Community Renewal, which will issue an order deregulating the unit upon expiration of the current lease.⁵¹ New York’s method of excluding high-income households from rent regulation is, accordingly, a blunt instrument that is relatively simple to administer, and we have located no other jurisdictions that deregulate units based on high rents or high household incomes. (Notably, this system removes a unit permanently from the regulated housing stock, even if a future tenant’s income is lower than \$200,000.)

B. *Setting Rent Increases*

i. *Process of setting rent increases*

A set of critical choices surround allowable annual rent increases. The first issue concerns the process. Jurisdictions can opt to use a pre-determined formula or create an agency, board or other body (or charge an existing institution) to set increases. Using a formula (for example, setting maximum rent increases by reference to a specified measure of inflation) simplifies the process considerably, but it may understate or overstate costs if changes in building operating costs diverge substantially from the index

⁵⁰ As of 2019, the DRT is \$2,774.76. See N.Y.S. Dep’t of Homes and Community Renewal, *Deregulation Rent and Income Thresholds* <https://hcr.ny.gov/system/files/documents/2018/10/deregulationrentincomethreshold.pdf>.

⁵¹ N.Y.C. Admin Code § 26-504.3.

selected. While a body may be able to incorporate more information and be more nuanced, that body may be vulnerable to political or other pressures.

Price Indexes: Even jurisdictions with annual increases fixed by or based on price indexes must choose which index to peg to and whether to increase or decrease from the index figure. There is substantial variation in the indices used to determine allowable annual rent increases. In D.C., for example, the Rental Housing Commission has determined that across-the-board increases to which landlords are entitled for rent-regulated units should equal the increase in the CPI plus 2%.⁵² In West Hollywood, it is 75% of the CPI for greater Los Angeles.⁵³ In Jersey City, the annual increase, set by the City Council, is tied more directly to the increase in cost of living during the lease term: it “cannot be greater than 4% or the percentage difference between the consumer price index three months prior to the expiration of the lease and three months prior to the commencement of the lease term, whichever is less.”⁵⁴

Rent Boards: Many jurisdictions vest the determination of the annual rent increases in rent boards, which may be elected or appointed by local or regional authorities. In New York State, local Rent Guidelines Boards determine rates for increases each year.⁵⁵ New York City’s Rent Guidelines Board has nine members, all appointed by the Mayor. Two members are appointed to represent tenant interests; two are appointed to represent the interests of property owners; and five represent the general public. Under the Emergency Tenant Protection Act of 1974, the Boards outside of New

⁵² D.C. Code § 42-3502.08 Explained By The Office Of The Tenant Advocate For 2018-2019, <https://ota.dc.gov/page/rent-control-cpi-2018>.

⁵³ West Hollywood Mun. Code Title 17 Art. 5 Ch. 17.36.020.

⁵⁴ Jersey City Code of Ordinances § 260-3(A), Allowable increases. [Amended 3-13-1986 by Ord. No. C-183].

⁵⁵ N.Y.C. Admin. Code § 26-510.

York City have the same composition, but members are appointed by the Commissioner of the State Division of Housing and Community Renewal.

Rent boards also serve functions outside of determining rent increases. In Newark, price increases are pegged to the consumer price index (and cannot exceed 4%), so the Board does not set the base annual increase. Instead, its “primary function is to conduct hearings and mediation of tenant and landlord petitions regarding the adjustment of rents under the City’s rent control laws.”⁵⁶

ii. *Hardship Increases*

To avoid Fifth Amendment takings claims, all systems should allow landlords to apply for hardship variances if the annual increases do not allow landlords to receive a fair income after operating expenses. Hardship increases may also allow jurisdictions more flexibility in responding to the risk that across-the-board increases will leave some landlords with too little revenue. If the standards for challenges are lax, they will add administrative costs as staff are forced to assess the merits of a large number of individual claims. And of course, overly generous waivers will ultimately undermine the affordability protections provided.

Rate of fair return: Jurisdictions estimate the rate of return a landlord receives on a given property by examining the income the landlord receives from that property after approved operating expenses relative to the property’s valuation.⁵⁷ The range of what

⁵⁶ City of Newark Dep’t of Econ. and Hous. Dev., <https://www.newarknj.gov/departments/rentcontrol>.

⁵⁷ In New York, for example, a “fair return” requires a “net annual return” (income minus operating expenses) of 7.5% of the valuation of the property, measured as the current valuation “properly adjusted by applying thereto the ratio which such assessed valuation bears to the full valuation as determined by the State Board of Equalization and Assessment on the basis of the assessment rolls of cities, towns and villages for the year 1954.” (9 CRR-NY 2102.3,

rent boards consider a fair return varies; in D.C., it is 12%, while under a similar formula New York considers 8.5% a fair return.⁵⁸ New York also allows landlords to claim an alternative form of hardship if their total annual gross income exceeds their total annual operating expenses by less than 5%.⁵⁹ The Jersey City Rent Board considers whether a landlord will be unable to make mortgage payments without the hardship increase.⁶⁰ Other jurisdictions use formulas, in place of fixed rates, but formulas make it more difficult for landlords (and tenants) to understand the hardship increase to which a landlord may be entitled.⁶¹ Both the Newark and Hoboken Rent Boards will deny hardship increases if a landlord purchased a building for an inflated price and thus could not reasonably have expected to receive a fair return on that investment.⁶²

Eligibility to seek a hardship increase: Some jurisdictions condition hardship increases upon a showing that landlords are in compliance with health and safety obligations. In Jersey City, a landlord must produce an inspection report showing that the building is in “substantial compliance” with applicable building codes—or submit to an

[https://govt.westlaw.com/nycrr/Document/14f8597d7cd1711dda432a117e6e0f345?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=\(sc.Default\)](https://govt.westlaw.com/nycrr/Document/14f8597d7cd1711dda432a117e6e0f345?viewType=FullText&originationContext=documenttoc&transitionType=CategoryPageItem&contextData=(sc.Default)).

⁵⁸ See D.C. Code § 42-3502.12; Div. Hous. & Cmty. Renewal, <https://hcr.ny.gov/system/files/documents/2018/10/formrtp45instructionsrentincreasealternativehardship.pdf>; see also <https://www1.nyc.gov/site/rentguidelinesboard/resources/glossary-of-rent-regulation-terms.page#hardship>

⁵⁹ Div. Hous. & Cmty. Renewal, <https://hcr.ny.gov/system/files/documents/2018/10/formrtp45instructionsrentincreasealternativehardship.pdf>; see also <https://www1.nyc.gov/site/rentguidelinesboard/resources/glossary-of-rent-regulation-terms.page#hardship>

⁶⁰ Jersey City, N.J., Mun. Code § 260-10(a).

⁶¹ See, e.g., Fair Lawn Borough Code Ch. 177 § 177-11(A)(4) (If the most recent year's percentage of net operating expenses to total gross income exceeds the average of the prior applicable years and the most recent year's percentage of net operating expenses to total gross income exceeds 60%, the applicant shall receive a hardship rent increase sufficient to restore the percentage of net operating expenses to total gross income of the most recent year to the average of the prior applicable years.”); § 177-11(C) (“The formula for figuring the hardship increase, if the Board has determined there is a hardship, is as follows: Net operating expense (4th year)/three-year average (as a decimal) = New rental to cure hardship.”).

⁶² See City of Hoboken General Regulations, Article II § 155-14, Appeal by landlord for a hardship rental increase (“It is not the intention of this chapter to permit a hardship rental increase when the landlord has not made a reasonably prudent investment.”).

inspection within six months—in order to be eligible for a hardship increase.⁶³ These processes are one way to ensure a balance between landlords’ entitlements to fair returns and their obligations to provide habitable dwellings; on the other and, landlords whose buildings are losing money may lack the available cash to make necessary repairs, further compounding their difficulties.

C. *Increases beyond annual rate*

i. *Vacancy bonuses*

Legislators may want to allow higher rent increases when a tenant moves out. Proponents argue that such vacancy bonuses maintain protections for an existing tenant while preventing landlords from being locked into low rents when that tenant leaves. But generous vacancy allowances undermine the degree to which rent regulation can keep overall rents low. Vacancy bonuses also may encourage landlords to push existing tenants out so they can replace the tenant and charge higher rents. As noted earlier, two recent studies of the San Francisco housing market provide some evidence for the argument, finding higher rates of eviction and turnover in regulated units in areas with unusually high price appreciation.⁶⁴

Range of vacancy bonus levels: Most jurisdictions allow landlords to increase rents beyond the annual increase when units become vacant, but there is substantial variation in the bonuses. In California, the Costa-Hawkins Rental Housing Act allows for full vacancy decontrol under rent regulation programs statewide, allowing a landlord to

⁶³ Jersey City Ord. § 260-1.

⁶⁴ Asquith, *supra* note 22, at 27-30; Diamond, *supra* note 19, at 16-18.

increase rents to the market rate when a new tenancy begins. In some other jurisdictions, landlords can make more substantial increases upon vacancy than they are otherwise permitted, but the vacancy bonus may not take the unit all the way up to the market rate. In New York City, for instance, a landlord can increase rent by 20% of the legal regulated rent for an incoming tenant with a two-year lease, or slightly less for a tenant with a one-year lease.⁶⁵ D.C.'s Vacancy Increase Reform Act of 2018 instead pegs allowable increases to the duration of the previous tenant's occupation of the unit, permitting a landlord to increase the rent by 10% if a previous tenant occupied a unit for fewer than ten years and 20% if the previous tenancy lasted more than ten years. This measure reined in vacancy bonuses that previously went up to 30%.⁶⁶

Conditions on vacancy bonuses: Several jurisdictions impose conditions, primarily improvements to the units in question, on vacancy bonuses. In early 2017, the Newark City Council reduced the amount that landlords were obligated to spend rehabilitating vacant apartments to raise rents by up to 10%.⁶⁷ Several months later, the vacancy reforms were essentially reversed and the city's rent regulation ordinance tightened, requiring landlords to spend an amount equal to four months' rent on rehabilitating vacant apartments before they could be entitled to vacancy bonuses of up to 10 percent (or eight months' rent to qualify for a 20 percent increase).⁶⁸ Jersey City similarly conditions a landlord's entitlement to a vacancy increase by pegging the amount

⁶⁵ "For an incoming tenant who opts for a one-year lease, the vacancy allowance is 20% minus the percentage difference between the Rent Guidelines Board's (RGB's) then-current guidelines for a two-year and a one-year lease." NYC Rent Guidelines Board, <https://www1.nyc.gov/site/rentguidelinesboard/rent-guidelines/vacancy-leases.page>.

⁶⁶<http://lms.dccouncil.us/Download/37181/B22-0025-Fiscal-Impact-Statement1.pdf>.

⁶⁷ Tenants' advocates decried the reform as "piece by piece deconstruction of rent control," while supporters argued that the reform "strengthened protections for tenants against slumlords and poor maintenance on buildings." Karen Yi, *New Rule 'deconstruction of rent control' in Newark, advocates say*, NJ.COM, Mar. 7, 2017, https://www.nj.com/essex/index.ssf/2017/03/newark_rent_control_ordinance.html.

⁶⁸ *Id.*

of the increase to the amount the landlord has spent on capital improvements, though it does not go as far as Newark has in setting a requisite spending level.⁶⁹

ii. *Capital improvement*

Another choice is the extent to which systems should compensate landlords for capital improvements through higher rents. Such increases help to incentivize property maintenance and needed repairs, but they also allow the housing to become less affordable. They may also encourage landlords to make investments that are not essential or desired by tenants, such as installing granite countertops and the like. Moreover, any allowances require monitoring and enforcement.

A landlord's ability to pass the costs of capital improvements in buildings or individual units along to existing tenants, as well as the duration of the resulting rent increases and whether they can be applied retroactively, varies by jurisdiction. Under Los Angeles's Rent Stabilization Ordinance (RSO), landlords may pass approximately 50% of the costs of improvements to both individual units and common areas⁷⁰ through to tenants benefiting directly from the improvements.⁷¹ This is done by dividing 50% of the costs of improvement over rental payments over five years.⁷² By contrast, New York state's rent regulation program allows owners to recover the full amount of their investments in improvements. The state's rent regulation scheme distinguishes between

⁶⁹ Jersey City Code of Ordinances § 260-5 and City of Newark Title XIX 19:2-7.1.

⁷⁰ The Rent Stabilization Ordinance defines a capital improvement as: "The addition or replacement of the following improvements to a rental unit or common areas of the housing complex containing the rental units, provided such new improvement has a useful life of five years or more: roofing, carpeting, draperies, stuccoing the outside of a building, air conditioning, security gates, swimming pool, sauna or hot tub, fencing, garbage disposal, washing machine, or clothes dryer, dishwasher, children's play equipment permanently installed on the premises, smoke detectors, and similar improvements as determined by the Commission" (L.A. Municipal Code 151.02.C).

⁷¹ L.A. Hous. & Cmty. Dev. Invest. Dep't, Capital Improvement Program, https://hcidla.lacity.org/sites/default/files/documents/capital_improvement_program_english_0.pdf.

⁷² L.A. Municipal Code § 151.07.A.1.a.

Major Capital Improvements (MCIs), covering building-wide improvements (such as new windows, boilers, or roofs)⁷³ and Individual Apartment Improvements (IAIs), covering improvements to individual apartments (such as installing a new dishwasher).⁷⁴

The Office of Rent Administration in the New York State's Division of Housing and Community Renewal must approve any requested rent increases based on MCIs.⁷⁵ IAIs do not require DHCR approval.⁷⁶ Rent increases based on MCIs are calculated by amortizing the approved costs of the improvements over nine years for buildings with more than 35 units and over eight years for buildings with 6 to 35 units, subject to a 6% cap on annual rent increases. These increases of 1/108th or 1/96th of the approved costs of the MCI, respectively, become permanent parts of the legal base rent.⁷⁷ The cost is divided by the total number of rooms in the building to arrive at a per-room, per-month increase applied to the tenant's rent.⁷⁸ MCIs cover only new installations and complete replacements, not repairs of old equipment.⁷⁹

⁷³ N.Y.C. Admin. Code § 2522.4.

⁷⁴ New York State Division of Housing and Community Renewal, <https://hcr.ny.gov/system/files/documents/2018/09/orafac26.pdf>.

⁷⁵ An owner may file an application to increase the legal regulated rents of the building or building complex on forms prescribed by the DHCR (N.Y.C. Admin. Code § 2522.4)

⁷⁶ New York State Division of Housing and Community Renewal, <https://hcr.ny.gov/system/files/documents/2018/09/orafac26.pdf>.

⁷⁷ "Effective June 15, 2015, the amortization period for calculating major capital improvement rent increases was modified from 84 months to 96 months for buildings with 35 or fewer units, and to 108 months for buildings with more than 35 units. The HCR calculates the rent increase based on either a 96 or 108 month amortization schedule of the certified allowable costs for the MCI. In other words, the owner can add 1/96th or 1/108th of the cost of the project to their monthly rent roll for the building. This building wide increase is then allocated among the units in the building on a per room basis. Notwithstanding this notion of a seven year amortization, so long as the increase was lawful, it becomes part of the base rent and remains a permanent part of the legal rent. That is, the 1/96th or 1/108th factor is simply used to calculate the adjustment, not to limit its application." NYC Rent Guidelines Board, <https://www1.nyc.gov/site/rentguidelinesboard/resources/rents-rent-increases.page>.

⁷⁸ *Id.*

⁷⁹ N.Y.C. Admin. Code § 2522.4.

Pursuant to the New York Rent Act of 2011,⁸⁰ the owner of a building with more than 35 units can collect a permanent monthly rent increase equal to 1/60th of the cost of an IAI; for owners of buildings with 35 or fewer units, the increase is 1/40th. Like MCIs, increases based on IAIs are subject to a 6% annual cap.⁸¹ Capital improvement increases that take place upon vacancy are added to the legal rent after vacancy bonuses are calculated.⁸² Landlords must provide current tenants with explanations of costs related to IAIs, but DHCR does not approve or audit these expenses, nor are landlords required to seek approval from new tenants for IAIs made during vacancy.

San Francisco permits landlords of buildings with five or fewer units to pass the full costs of capital improvements on to sitting and future tenants of a unit that has benefited from the improvements, subject to a 5% annual cap on any increase in base rent; landlords of buildings with more than five units can pass on only 50% of their costs, subject to a 10% annual cap on base rents.⁸³ D.C. sets higher limits, permitting increases of up to 20% for building-wide improvements and up to 15% for other improvements.⁸⁴

iii. *Rents below the legal maximum*

Additional questions arise when a landlord charges a tenant a rent below the legal maximum or, in some jurisdictions, when a landlord declines to increase a tenant's rent by the maximum allowable increase. A landlord might do this because the market will not support the legal maximum rent, or to keep desirable tenants in their buildings. On

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⁸¹ N.Y. State Div. Hous. & Cmty. Renewal, <https://hcr.ny.gov/system/files/documents/2018/09/orafac26.pdf>.

⁸² *Id.*

⁸³ Two exceptions are seismic work required by law and energy conservation work, for which landlords may pass 100% of their costs through to tenants. *See* <https://sfrb.org/fact-sheet-5-landlord-petitions-and-passthroughs>. In addition, “a majority of the tenants in any unit may elect an alternative passthrough method based on 100% of the certified capital improvements costs, to be imposed at the rate of 5% of the tenant’s base rent per year, with the total passthrough limited to 15% of the tenant’s base rent.” *Id.*

⁸⁴ D.C. Code § 42–3502.10.

the one hand, policymakers shouldn't discourage landlords from setting rents that are lower than the allowable rents. On the other hand, doing so can create a risk that landlords will impose banked rent increases suddenly and burden tenants with very high annual rent increases. Some rent regulation proponents also worry that landlords game these banked rents by essentially charging 'teaser' rents to attract tenants, but then increasing rents sharply in order to get rid of tenants they don't like, or to empty the apartment in order to take advantage of increases allowed upon vacancy.

Jurisdictions have taken different approaches to rent banking. In New York City, a landlord charging a "preferential" rent—anything lower than the legal maximum, or the base rent plus all allowable increases—may revoke the preferential rent and begin charging the higher, legal regulated rent upon either lease renewal or vacancy.⁸⁵ They must, however, provide tenants with written notice of the legal regulated rent in both the original and renewal leases.⁸⁶ Furthermore, landlords and tenants may contract to apply the preferential rent for the duration of a tenancy.⁸⁷

In Washington, D.C., a similar system prevailed until recently. Under the belief that "landlords have not been transparent in really identifying what the rent is and that a reasonable tenant assumes that the rent is the amount of money that they pay a month," D.C. Attorney General Karl Racine challenged the practice of basing rent increases on legal maximum rents, rather than the preferential or concessionary rents tenants actually pay, as a consumer protection violation, ultimately succeeding before the D.C. Housing

⁸⁵ N.Y. State Div. of Homes and Cmty. Renewal, <http://www.nyshcr.org/Rent/FactSheets/orafac40.pdf>.

⁸⁶ "However, the rent laws impose a condition on an owner's right to charge the claimed legal regulated rent. The legal regulated rent must have been written in the vacancy or renewal lease in which the preferential rent was first charged. In addition, it is required that the legal rent be indicated in all subsequent renewal leases. Registration with DHCR of the legal regulated rent by itself will not establish the legal regulated rent for future usage." N.Y. State Division of Homes and Community Renewal, <http://www.nyshcr.org/Rent/FactSheets/orafac40.pdf>.

⁸⁷ *Id.*

Commission in 2018.⁸⁸ The Rent Charged Definition Clarification Amendment Act of 2018 codified this decision, requiring that rent increases be based on the amount a tenant actually pays rather than the legal maximum rent.⁸⁹

San Francisco allows landlords to apply banked rent increases to future years, while West Hollywood explicitly disallows this practice,⁹⁰ as does Los Angeles.⁹¹ East Palo Alto prohibited banking after a large housing provider increased its rents by 40% after several years of foregoing rent increases, but subsequently moved to a system allowing banking subject to a 10% annual cap on rent increases.⁹² Richmond, California similarly allows landlords to bank rent increases, but subjects increases to a 5% annual cap.⁹³

⁸⁸ Jon Steingart, *The DC Council Will Likely Pass Legislation to Fight Sharp Price Increases for Tenants*, GREATER WASHINGTON, Nov. 20, 2018, <https://ggwash.org/view/69920/the-dc-council-will-likely-pass-rent-concession-legislation-intended-to-end-sharp-price-increases-for-tenants>.

⁸⁹ See Jon Steingart, *A Lawsuit Alleging a DC Landlord Uses Discounts to Circumvent Rent Control May Have Gotten a Boost*, GREATER WASHINGTON, Mar. 26, 2018, <https://ggwash.org/view/66994/lawsuit-going-after-dc-landlords-offering-rent-concessions-gets-boost>; Jon Steingart, *Legislation Intended to End Sharp Rent Increases Lands in the DC Council*, GREATER WASHINGTON, Oct. 8, 2018, <https://ggwash.org/view/69358/legislation-intended-to-end-sharp-rent-increases-lands-in-the-dc-council>; Jon Steingart, *supra* note 89.

⁹⁰ City of West Hollywood Rent Stabilization and Housing Division, *Rent Stabilization Guide*, <https://www.weho.org/home/showdocument?id=15066> at 8.

⁹¹ City of Richmond Rent Program, https://www.ci.richmond.ca.us/DocumentCenter/View/43859/Item-H-2-Presentation_8_23_17?bidId= at

⁹² The prohibition, however, made administering the program more difficult because many more landlords filed for rent increases every year (knowing they would otherwise lose the opportunity to take them), and it became more cumbersome to calculate permissible rent levels and track the maximum legal rent for each tenancy. The city subsequently eased the prohibition, allowing banking subject to a 10% annual cap on rent increases. The Los Angeles Rent Board, by contrast, decided in 2009 to prohibit banking, citing fidelity to the goal of protecting against sudden rent increases. The Board also noted that it used a simpler rent registration system—tracking rents only at the unit level, rather than for each new tenancy—than East Palo Alto that was unlikely to be similarly burdened by a banking prohibition. See https://www.ci.richmond.ca.us/DocumentCenter/View/43834/8_23_17-Item-H-2?bidId=; https://www.ci.richmond.ca.us/DocumentCenter/View/43859/Item-H-2-Presentation_8_23_17?bidId=; https://www.ci.richmond.ca.us/DocumentCenter/View/47907/COMPILED-ITEM-I-1_11-14-18.

⁹³ The Board considered the arguments against banking, observing that, in California, “most landlords are able to receive large rent increases through vacancy decontrol” over the long run, and suggested that a landlord who declines to take an annual increase is likely already receiving a fair rate of return for that year, negating the need to allow the landlord to take the increase later. Nevertheless, Richmond ultimately adopted banking, citing the likelihood that landlords will choose to raise rents every year if they know they will forfeit increases otherwise as well as the potential administrative costs of prohibiting banking. https://www.ci.richmond.ca.us/DocumentCenter/View/47907/COMPILED-ITEM-I-1_11-14-18.

D. *Tenant rights and protections*

Rent regulation schemes are often coupled with protections for tenants. Such protections may either ensure extra security for particularly vulnerable populations or afford tenants in regulated units protections against eviction and harassment that owners of regulated units might be more prone to use than owners of market-rate units because of the value of creating a vacancy in a regulated unit.

The trade-off here is clear. Additional rights, such as just cause eviction rules, can protect tenants from being harassed to leave their units and help prevent arbitrary or unexplained evictions.⁹⁴ But they can also increase landlords' costs of removing tenants when warranted and ultimately raise the cost for all tenants and discourage investment in rental properties.⁹⁵ They can also cause landlords to use additional screening to minimize the risk of problematic tenants.⁹⁶

⁹⁴ See, e.g., LEE ANNE FENNELL, *THE UNBOUNDED HOME* (2009); Andrew Scherer, *Gideon's Shelter: The Need to Recognize a Right to Counsel for Indigent Defendants in Eviction Proceedings*, 23 HARV. CIVIL RIGHTS-CIVIL LIBERTIES L. REV. 557 (1988); Margaret Jane Radin, *Residential Rent Control*, 15 PHIL. & PUB. AFF. 350, 369 (1986); Kenneth Salzberg & Audrey A. Zibelman, *Good Cause Eviction*, 21 WILLAMETTE L. REV. 61 (1985).

⁹⁵ See, e.g., Diamond et al., *supra* note 19; W. DENNIS KEATING, *RENT CONTROL* 50 (1998) discusses higher rent in return for security from eviction (long stay tenants benefit in time); J.R. Miron, *Security of Tenure, Costly Tenants and Rent Regulation*, 27 URBAN STUDIES 167 (1990). Karl Manheim, *Tenant Eviction Protections and the Takings Clause*, 1989 WIS. L. REV. 925, 958 (1993).

⁹⁶ Landlords screening due to difficulty of eviction is discussed in David P. Sims, *Rent Control Rationing and Community Composition: Evidence from Massachusetts*, 11 BE J. ECON ANALYSIS & POL'Y, 6 (2011). See also Meredith Greif, *Regulating Landlords: Unintended Consequences for Poor Tenants*, 17 CITY & CMTY. (2018).

i. *Protections against eviction and harassment*

Rent regulation provisions designed to protect tenants from unjust evictions or landlord misconduct may take the form of just cause eviction statutes and other anti-harassment or anti-displacement protections. Rent regulation programs may also require landlords to pay relocation expenses for tenants under some circumstances.

Eviction protections: Just cause statutes limit the bases on which landlords may evict tenants to statutorily-specified grounds.⁹⁷ For example, in Washington, D.C., Oakland, San Francisco, and all of New Jersey,⁹⁸ where just cause eviction protections exist, acceptable causes for eviction include nonpayment of rent; violation of a lease obligation; sale or conversion of the unit; or discontinued housing use, among others.⁹⁹

Some jurisdictions provide eviction protections to all tenants; others, like New York City and San Francisco, provide them only to tenants in rent-regulated units; and still others decline to provide them all together. At the universalist end of the spectrum, Washington, D.C. extends just cause eviction protections to all units;¹⁰⁰ Seattle’s just cause ordinance expressly extends this protection even to “month-by-month renters and

⁹⁷ Localhousingolutions.org, Just Cause Eviction Policies, <https://www.localhousingolutions.org/act/housing-policy-library/just-cause-eviction-policies-overview/just-cause-eviction-policies/>.

⁹⁸ New Jersey Eviction Law N.J.S.A. §§ 2A:18-53-2A:18-84 https://www.state.nj.us/dca/divisions/codes/publications/pdf_lti/evic_law.pdf

⁹⁹ NYU Furman Center, *Gentrification Response: A Survey of Strategies to Maintain Neighborhood Economic Diversity*, (2016), at 17 http://ecenter.org/files/NYUFurmanCenter_GentrificationResponse_26OCT2016.pdf.

¹⁰⁰ Rent Stabilization and Eviction for Good Cause Ordinance, Berkeley Mun. Code IX. Ch. 13.76, https://www.cityofberkeley.info/Rent_Stabilization_Board/Home/Ordinance_Rent_Stabilization_and_Eviction_for_Good_Cause.aspx; Oakland Code of Ordinances 8.22.360 - Good Cause Required for Eviction (“No landlord shall endeavor to recover possession, issue a notice terminating tenancy, or recover possession of a rental unit in the city of Oakland unless the landlord is able to prove the existence of one of the following grounds . . .”).

renters with verbal agreements;”¹⁰¹ and Oregon voters elected to impose just-cause eviction protections statewide.¹⁰²

Berkeley and Oakland also extend just cause protections to all units. A key limitation on these protections with respect to rent regulated units in California, however, is the potential for eviction under the statewide Ellis Act, which allows an owner of a rent-regulated building to evict tenants in order to remove the building from the rental market.¹⁰³

Landlords seeking to evict tenants may also be required to pay relocation expenses to minimize the costs and disruptive effects of moving for tenants. In 2018, the Oakland City Council passed the Uniform Relocation Ordinance, which increased the relocation payments landlords are required to pay tenants in rent-regulated units in all no-fault evictions and pegged these payments to the CPI.¹⁰⁴ The Ordinance also expanded the relocation payment requirement to apply to owners seeking to evict tenants in order to move back into their units.¹⁰⁵ Los Angeles and San Francisco also require landlords to pay relocation expenses for evictions for which there is no just cause, while New York City does not.¹⁰⁶

¹⁰¹ Seattle Dep’t of Construction and Inspections, [http://www.seattle.gov/sdci/codes/codes-we-enforce-\(a-z\)/just-cause-eviction-ordinance](http://www.seattle.gov/sdci/codes/codes-we-enforce-(a-z)/just-cause-eviction-ordinance).

¹⁰² Sasha Ingber, *Oregon Set to Pass the First Statewide Rent Control Bill*, NPR, Feb. 27, 2019, <https://www.npr.org/2019/02/27/698509957/oregon-set-to-pass-the-first-statewide-rent-control-bill>.

¹⁰³ Cal. Gov’t Code Chapter 12.75.

¹⁰⁴ City of Oakland Code of Ordinances, No. 13468, https://library.municode.com/ca/oakland/ordinances/code_of_ordinances?nodeId=874690; Ali Tadayon, *Oakland Landlords Will Have to Pay Thousands if They Evict Tenants to Move Back In*, THE MERCURY NEWS, Jan. 27, 2018, <https://www.mercurynews.com/2018/01/24/oakland-landlords-will-have-to-pay-thousands-if-they-evict-tenants-to-move-back-in/>.

¹⁰⁵ Oakland Mun. Code § 8.22.850 and OMC § 8.22.300 *et seq.*, <https://cao-94612.s3.amazonaws.com/documents/OAK071011.pdf>.

¹⁰⁶ L.A. Mun. Code § 151.30; S.F. Ordinance § 37.9C.

Harassment protections: Harassment aimed at pushing tenants to vacate their units is a risk when market conditions and vacancy bonuses allow regulated landlords to collect higher rents through turnover. A series of legislative efforts in 2017 expanded harassment protections for tenants in New York City,¹⁰⁷ forbidding landlords from harassing tenants by way of threats, intimidation, or tactics such as disrupting services or failing to complete repairs and limiting the circumstances under which landlords can communicate with tenants about buyouts.¹⁰⁸

New York City tenants can initiate harassment cases in housing court and can, potentially, receive civil penalties and/or compensatory damages, attorneys' fees and/or punitive damages.¹⁰⁹ San Francisco's tenant harassment law generally offers the same protections as New York City's, but it does not similarly limit landlords' abilities to contact tenants about buyouts.¹¹⁰ In San Francisco, a tenant who successfully sues for harassment can collect the greater of treble damages or \$1,000 for each offense under local law, and \$2,000 in statutory damages for each threat of harassment under state law.¹¹¹ Both the Rent Board and the City Attorney can pursue civil litigation against landlords in harassment cases for civil penalties and injunctive relief or to refer cases to the District Attorney.¹¹²

¹⁰⁷ N.Y.C. Dep't of Hous. Pres. and Dev., <https://www1.nyc.gov/site/hpd/renters/harassment.page>.

¹⁰⁸ *Id.*

¹⁰⁹ *Id.*; see also NYU Furman Center, *supra* note 99.

¹¹⁰ S.F. Admin. Code § 37.10B.

¹¹¹ *Id.* § 37.10B(c).

¹¹² Any person, including the City, may enforce the provisions of this Section by means of a civil action (S.F. Ordinance § 37. 10B).

New York City also designates “anti-harassment zones,”¹¹³ in which an owner seeking a permit for construction or renovation must first obtain a “certificate of no harassment” (or a waiver) by submitting documentation about the owners (or members of a corporate entity) and any rental history to the city’s Department of Housing Preservation and Development. The city then commences a period of notice, outreach, and investigation into any past harassment, including soliciting feedback from tenants and community groups. If the investigation reveals allegations of harassment, an administrative body reviews the case to determine whether the agency can refuse to grant a certificate.¹¹⁴

In Oakland, enforcement power is vested in the City Attorney to pursue actions against landlords displaying a pattern or practice of harassment, rather than relying on individual tenants to raise these claims. One advantage of this system is that “the burden of reporting to the City Attorney is significantly lower than filing a case and the City Attorney can identify patterns of harassment that may be hard for individual tenants to uncover.”¹¹⁵ East Palo Alto and West Hollywood have protection against harassment, but do not provide for treble damages or attorneys’ fees.¹¹⁶

¹¹³ N.Y.C. Dep’t of Hous. Pres. and Dev., <https://www1.nyc.gov/site/hpd/owners/certification-of-no-harassment.page>. The Certification of No Harassment requirements apply to five geographic areas and to all single room occupancy multiple dwellings (SROs).

¹¹⁴ See NYU Furman Center, *supra* note 99, at 19.

¹¹⁵ See *id.*

¹¹⁶ City of West Hollywood, <https://www.weho.org/city-government/rent-stabilization-housing/rent-stabilization/tenant-faqs/tenant-harassment-prohibition> and City of East Palo Alto Ordinance No. 371, <https://www.ci.east-palo-alto.ca.us/DocumentCenter/View/3133>.

ii. *Special provisions for particular tenants*

Even if policymakers choose not to provide additional protections to all rent regulated tenants, they may decide to offer them to vulnerable groups, such as seniors, people with disabilities, or low-income households with children. Often these protections involve subsidies that cover rent increases for such tenants (essentially limiting the tenants' contributions to rent). The argument for such protections is that these vulnerable populations often are on fixed incomes and have limited or no ability to increase earnings in order to handle higher rents. Such subsidies also shift the responsibility of subsidies from landlords to the government. But subsidies, of course, involve taxpayer dollars and can be costly to administer and enforce. Policymakers should also consider the potential risk of moral hazard if it is possible for tenants to change their reported income, household composition, or some other malleable attribute in order to qualify for benefits. Landlords may also be subject to moral hazard, raising rents on tenants beyond what they would otherwise have asked, because the government and not the tenant is paying the increase.

Many jurisdictions provide no such protections, although they may provide these groups with benefits outside the rent regulation program. Both New York and D.C. extend additional protections against rent increases to tenants of rent-regulated apartments who are elderly or have disabilities. In both cities, tenants must register in order to receive these subsidies.¹¹⁷

¹¹⁷ N.Y.C. Dep't of Fin., <https://www1.nyc.gov/assets/finance/downloads/pdf/brochures/scriedriebrochure.pdf>.

New York City’s Senior Citizen Rent Increase Exemption (SCRIE) and the Disabled Rent Increase Exemption (DRIE)¹¹⁸ freeze rents at their current level for tenants with combined household incomes of \$50,000 or less who pay one-third or more of their monthly household income in rent.¹¹⁹ Going forward, a property tax credit to the landlord covers the difference between the legal rent and the frozen rate the tenant pays. Tenants are responsible both for applying to the program and for periodically reestablishing their eligibility. Public awareness and uptake have been low since the program’s inception,¹²⁰ prompting the city to engage in public outreach to make potential applicants aware of their eligibility.¹²¹ In D.C., the Elderly Tenant and Tenant With a Disability Protection Amendment Act of 2016 caps annual rent increases for eligible tenants at the lowest of the Social Security Cost-of-Living Adjustment; the CPI; or 5% of the rent the tenant currently pays.¹²²

New York’s SCRIE and DRIE programs fix rents at lower levels while keeping the amount of rent the landlord receives the same; as a result, these programs are also

¹¹⁸ N.Y.C., Disability Rent Increase Exemption (DRIE) Program, <https://www1.nyc.gov/nyc-resources/service/1522/disability-rent-increase-exemption-drie-program>.

¹¹⁹ N.Y.C. Dep’t of Fin., <https://www1.nyc.gov/assets/finance/downloads/pdf/brochures/scriedriebrochure.pdf>.

¹²⁰ See Erica Byfield, *NYC Program Helps Seniors Freeze Their Rent, But ‘Tens of Thousands’ Don’t Know About It*, BC NEW YORK, Jul. 14, 2019 <https://www.nbcnewyork.com/news/local/NYC-Program-Helps-Seniors-Freeze-Their-Rent-But-Many-Dont-Know-About-It-Thousands-Dont-Know-About-This-NYC-Rent-Freezing-Program-434590073.html> (New York City Councilmember Helen Rosenthal’s office has been trying to raise awareness of SCRIE and locate more seniors to apply. So far, they have signed up about 1,400 people. “Reimbursement is not the issue. Money from the city isn’t the issue,” Rosenthal said. “The issue is tens of thousands of people qualify for the program but don’t know about it.” A similar rent freeze program, DRIE, is targeted toward people with disabilities. Both programs require residents to reapply each year to ensure they don’t earn more than \$50,000 per year.); Mireya Navarro, *Albany Expands Effort to Cap Regulated Rents for Older Tenants*, N.Y. TIMES, May 20, 2014, <https://www.nytimes.com/2014/05/21/nyregion/albany-expands-effort-to-cap-regulated-rents-for-older-tenants.html>

¹²¹ Sarina Trangle, *City Goes Door-To-Door in Effort to Enroll More Senior Citizens in Rent Freeze Program*, AM NEW YORK, Jul. 9, 2017, <https://www.amny.com/real-estate/city-goes-door-to-door-in-effort-to-enroll-more-senior-citizens-in-rent-freeze-program-1.13790667> (“At that time, the city estimated that 69,000 eligible households were not benefitting from SCRIE and nearly 25,000 qualified families were not receiving DRIE.”)

¹²² D.C. Code § 42-3502.24.

relatively costly to the city government, which makes up the difference between the frozen rent and the legal maximum rent.¹²³ Under D.C.'s scheme, landlords must absorb the difference between the 5% cap on rent increases for tenants who are elderly or have disabilities and 10% cap for all other tenants; however, landlords receive property tax credits for the costs of capital improvements to properties housing elderly or disabled tenants.¹²⁴ Thus both systems contain at least some provisions to encourage landlords to take elderly and disabled tenants.

E. *Deregulation*

The next set of decisions concerns when, if at all, to allow landlords to remove units from regulation. More lenient deregulation likely decreases the stock of rent-regulated housing. But providing more flexibility to landlords may help to limit the extent to which rent regulation dampens overall investment in housing. Jurisdictions may decide to condition deregulation on the landlord paying the tenant's relocation costs or contributing to a fund to support affordable housing. Deciding on the appropriate levels of compensation is challenging. By contrast, if payments are too low, they will do little either to slow the pace of deregulation or to meaningfully contribute to addressing broader affordability challenges.

Rent regulation ordinances specify the mechanisms through which units leave the regulated market, and the scope of these provisions plays a significant role in shaping a jurisdiction's regulated housing stock. New York City's high-rent/high-income

¹²³ N.Y.C. Admin. Code § 26-509.

¹²⁴ D.C. Code § 42-3502.24.

deregulation¹²⁵ is an example of one such mechanism; units in the City may also become deregulated through conversion into a cooperative or condominium;¹²⁶ substantial rehabilitation of a substandard building;¹²⁷ conversion to commercial or professional use; condemnation; and demolition.¹²⁸ A unit may also become deregulated if the rent reaches a Deregulation Threshold, which as of 2019 is \$2,774.76.¹²⁹ In 2017, the median asking rent for units advertised for lease was \$2,695.¹³⁰ Finally, landlords may evict tenants if they move into the property themselves, and may offer their tenants “buyouts” or compensatory payments for leaving.¹³¹ Many of these provisions are common across jurisdictions (though the Oakland City Council recently removed “substantial rehabilitation” as a mechanism for deregulation).¹³² The Ellis Act also plays a large role in shaping deregulation in California, allowing owners to exit rent control if they take units off the rental market entirely to sell or live in them. A 2017 Los Angeles ordinance requires landlords who demolish rent-stabilized units under the Ellis Act and construct rental units on the same property within five years to replace the demolished units with the same number of regulated units or 20% of all new units, whichever is greater.¹³³

¹²⁵ See Part II(A)(ii), *supra*.

¹²⁶ Tenants whose buildings are being converted into cooperatives or condominiums must be offered an opportunity to purchase their units and, even following conversion, sitting tenants’ units remain rent-regulated. See 13 N.Y.C.R.R. Part 18, 23.

¹²⁷ 9 N.Y.C.R.R. § 2520.11.

¹²⁸ N.Y.C. Rent Guidelines Board, *Changes to the Rent Stabilized Housing Stock in New York City in 2017*, <https://www1.nyc.gov/assets/rentguidelinesboard/pdf/changes18.pdf>; <https://hcr.ny.gov/high-rent-vacancy-high-rent-high-income-deregulation>.

¹²⁹ N.Y.S. Dep’t for Homes and Community Renewal, *High-Rent Vacancy and High-Rent High-Income Deregulation* <https://hcr.ny.gov/system/files/documents/2018/10/deregulationrentincomethreshold.pdf>

¹³⁰ NYU Furman Center, *State of New York City’s Housing and Neighborhoods in 2017*, Available at http://furmancenter.org/files/sotc/SOC_2017_Full_2018-08-01.pdf.

¹³¹ “In practice, these transfer payments from landlords are common and can be quite large.” Rebecca Diamond, *What does economic evidence tell us about the effects of rent control?*, BROOKINGS, Oct. 18, 2018.

¹³² Ali Tadayan, *Oakland Moves Toward Ending Rent Control Exemption*, EASTBAY TIMES, Sep. 20, 2018, <https://www.eastbaytimes.com/2018/09/20/oakland-moves-toward-ending-rent-control-exemption/>.

¹³³ L.A. Municipal Code § 151.28.

Deregulation through abolition of rent regulation is, of course, the most drastic example of decontrol, as seen when Massachusetts voters approved a 1994 ballot referendum ending rent control statewide (at the time, three cities, Boston, Cambridge, and Brookline, had rent regulation ordinances).

F. *Tracking and enforcement*

Jurisdictions also need to make choices about how to monitor and enforce whatever regulations they choose to adopt. Monitoring and enforcement may take place at the state level (as in New York), or through local governments (as in California and New Jersey). Monitoring compliance requires a registry of rent regulated units and an effective system of monitoring increases. Enforcement systems may raise privacy concerns, as public information about which homes are regulated may reveal information the tenant would prefer not to be public. But if rent regulations are not well-enforced or are selectively enforced, they will be ineffective, and may encourage efforts to evade the regulation as well as disregard for other regulations.

Tracking of units and their legal rents: It is difficult for tenants to know the rents they should be paying without a registry of regulated buildings. In New York City, owners must register rent stabilized buildings¹³⁴ and file annual rent registrations,¹³⁵ although these reports are not public, which might undermine accountability. Oakland does not maintain any registry of rent-regulated buildings, posing substantial complications for enforcement efforts.¹³⁶

¹³⁴ N.Y.C. Admin Code § 26-517.

¹³⁵ *Id.* § 26-517(f).

¹³⁶ See Bigad Shaban, *Lack of Oversight May be Allowing Some Oakland Landlords to Wrongfully Evict Families*, *Elderly* NBC BAY AREA, Feb. 16, 2018 (“Although copies of all eviction notices are kept on

In Hoboken, residents voted in 2011 to impose limits on a system under which tenants could collect retroactive rent overcharges from landlords. Under the old system, tenants who believed they were being overcharged could petition the Rent Leveling Board and, if successful, collect all past overcharges. Disputes between landlords and tenants commonly arose from a lack of documentation; accordingly, in 2006, the city began requiring landlords to file annual forms documenting the legal rents for their units. The 2011 vote then limited the scope of the past overcharges tenants could collect to two years of rent.¹³⁷

Enforcement of legal rents: New York’s rent regulation program is overseen by the state Office of Rent Administration within the Division of Housing and Community Renewal (DHCR). Treble damages are available for many violations (based on findings by DHCR), including willful overcharges and recovering possession of a regulated unit for an unauthorized purpose. Tenants may also, of their own initiative, apply for rent reductions if landlords fail to provide services.¹³⁸

In San Francisco, imposing an unlawful increase is a misdemeanor punishable by a mandatory fine of \$1,000 and, potentially, by up to six months of jail time, as is unlawfully recovering possession of an apartment.¹³⁹ The city grants tenants a private right of action for injunctive relief and treble damages for both rent overcharges and

file at Oakland’s Department of Housing and Community Development, city officials tell the Investigative Unit no one is currently tracking how many owner move-in evictions occur each year, let alone attempt to determine how many of those evictions may be fraudulent.”)

¹³⁷ Heather Haddon, *New Jersey’s Rent-Control Laws Fading*, THE WALL STREET JOURNAL, Nov. 12, 2011, <https://www.wsj.com/articles/SB10001424052970204358004577032473909862662>; Hoboken General Regulations § 155-4(C).

¹³⁸ N.Y.C. Admin Code § 26-514; Division of Housing and Community Renewal, <https://hcr.ny.gov/system/files/documents/2019/03/fact-sheet-1-sj-final-12-19-18.pdf> and <https://hcr.ny.gov/system/files/documents/2018/09/factsheet14-rentreductionsfordecreasedservices.pdf>

¹³⁹ S.F. Admin. Code § 37.10A.

harassment.¹⁴⁰ The City Attorney is also empowered to bring civil actions against landlords.¹⁴¹ Additionally, a nonprofit organization “that has a primary mission of protecting the rights of tenants in San Francisco” may sue for rent overcharges and harassment if neither the tenant nor the City Attorney has taken the case.¹⁴²

G. Interactions Among Different Provisions

The provisions we have outlined interact with each other, and the effect of each depends upon the other components of a jurisdiction’s rent regulation scheme. Thus, in order to know the amount of rent landlords in a jurisdiction can charge, it is necessary to look not only to the base above-the-board increase to which they are entitled but also to allowances for improvements and hardship; costs like taxes, fuel, and repairs that landlords can pass on to tenants; and whether landlords are permitted to “bank” rent increases not taken in a particular year for future years.¹⁴³ On its face, for instance, Los Angeles’s rent regulation ordinance allows landlords to recoup fewer of their capital improvement costs than New York; however, unlike landlords in New York, Los Angeles landlords are permitted to raise rents on all units to market rate upon vacancy, ultimately providing a faster route to market-rate rents. Similarly, the magnitude of the effect of vacancy bonuses in any given jurisdiction depends on how large they are in proportion to the annual increases otherwise granted to landlords. Moreover, the effectiveness of any protection depends upon the resources both of tenants and of the agency charged with oversight, as well as the political will behind enforcement.

¹⁴⁰ *Id.* § 37.11A.

¹⁴¹ *Id.*

¹⁴² *Id.*

¹⁴³ City of Oakland, <https://www.oaklandca.gov/resources/learn-more-about-allowable-rent-increases>.

Outstanding Questions, Future Research, and Conclusion

In a policymaker's ideal world, research would show the effect of each of the various decisions that have to be made in designing a rent regulation program. In the real world, however, we have little rigorous research about modern day rent regulation programs, much less about which particular features drive the effects rent regulation may have upon the housing market. Without changes in policies that allow researchers to isolate the effects of various features, it will be difficult to specify what kinds of reforms might lead to more effective and efficient policies. But some jurisdictions are considering changes in particular elements of their rent regulation programs, and research should follow those reforms carefully. Further, while we have focused on programs in the United States, it would be helpful as well to survey the design of programs around the world and to better understand what the research shows about those programs.¹⁴⁴

More generally, jurisdictions considering new rent regulation programs, as well as those thinking about how to reform existing systems, should think carefully about the range of options available, and talk with people familiar with various jurisdictions' programs to learn more about the implications and unintended consequences of various design elements. Jurisdictions also should consider how their rental markets are changing, and whether their rent regulation programs are keeping up. As more single-family homes are rented, for example, and more of those are owned by companies that operate hundreds or thousands of units, the exemption for single-family rentals may no

¹⁴⁴ Of the reviewed studies, most use data from the 1990s. Only the few studies which exploit changes in regulations in San Francisco and Massachusetts use data up to 2000, one study goes up to 2005; only Asquith *supra* note 22 uses data solely from after 2000.

longer be warranted in some cities.¹⁴⁵ Similarly, as more tenants use home-sharing platforms to sublet their units for short-term visitors,¹⁴⁶ the interaction of rent regulation and home-sharing regulations may require attention. More jurisdictions are funding legal assistance for renters facing eviction, and that change may require rethinking some aspects of rent regulation programs.¹⁴⁷

Given the crisis in housing affordability that almost every major metropolitan area faces,¹⁴⁸ the pressure to regulate rents will likely increase in coming years. Further, residents are likely to call for rent regulation to counter their concerns about the effects new housing or other investments in neighborhoods may have in increasing rents or prompting displacement.¹⁴⁹ Dated research based upon older, less flexible systems likely will not be persuasive in those debates. Instead, policymakers and researchers should focus on analyzing how best to design and test modern rent regulation systems that enhance stability for current tenants while minimizing negative effects on investment in both new and existing rental housing.

¹⁴⁵ Turner Center, *The Rise of Single-Family Rentals after the Foreclosure Crisis*, at 1-2 (Apr. 2008) http://turnercenter.berkeley.edu/uploads/Single-Family_Renters_Brief.pdf.

James Mills et al., *Large-scale buy-to-rent investors in the single-family housing market: The emergence of a new asset class*, *Real Estate Economics*, 1 (2017). Available at <https://doi.org/10.1111/1540-6229.12189>

¹⁴⁶ See David Wachsmuth et al. *The High Cost of Short-Term Rentals in New York City*, Jan. 30 2018, McGill University; Alastair Boone, *What Airbnb Did to New York City*, CITYLAB (March 5, 2018), <https://www.citylab.com/equity/2018/03/what-airbnb-did-to-new-york-city/552749/>.

¹⁴⁷ <https://www.usnews.com/news/cities/articles/2019-01-22/cities-provide-lawyers-to-tenants-facing-eviction>.

¹⁴⁸ “Every major metropolitan area in the U.S. has a shortage of affordable and available rental homes for extremely low-income renters”. The same is true for every state. In metro areas, the shortage severity ranges from 13 affordable and available rental homes to 51 for every 100 extremely low-income rent households. In states, the range is from 19/100 to 66/100. There are more than 20 million rent burdened households across country of which nearly 8.8 million are severely rent burdened. “Renters with incomes below 80% of AMI account for 92% of all cost-burdened renters.” NAT’L LOW INCOME HOUS. COALITION, *The Gap: A Shortage of Affordable Homes* (2019), https://reports.nlihc.org/sites/default/files/gap/Gap-Report_2019.pdf.

¹⁴⁹ Vicki Been, *City NIMBYs*, 33 J. LAND USE & ENVTL. L. 217, 242-245 (2017).

John Mangin, *The New Exclusionary Zoning*, 25 STAN. L. & POL’Y REV. 91, 107-108 (2014)

Michael Hankinson, *When Do Renters Behave Like Homeowners? High Rent, Price Anxiety, and Nimbysism*, 112 AM. POL. SCI. REV. 473 (2018).