

# THE RACE AGAINST RENT: A LOOK INTO WHY PREEMPTIVE BANS ON RENT REGULATION SHOULD BE LIFTED IN INDIANA

MEREDITH FULTON\*

## INTRODUCTION

“The Rent is Too Damn High!”<sup>1</sup> A scream heard across the country as the median rent in the United States rises to over \$2,000 a month for the first time in the nation’s history.<sup>2</sup> Rent prices are rising faster than they have in over thirty-five years, and most renters are spending more money on rent and utilities each month than anything else.<sup>3</sup> With median rent rising faster than median income, many have argued that the unaffordability of rental housing is a national emergency and that “something’s gotta give.”<sup>4</sup>

Historically, in times of national emergency or financial distress, steps have been taken to mediate the cost of living so that individuals can more easily afford to survive.<sup>5</sup> In the early twentieth century (particularly during the post-World War I and Great Depression eras), legislation was passed to stop unlimited and unchecked increases in rent prices by landlords so that individuals could afford to stay in their homes.<sup>6</sup> This legislation was penned “rent control.”<sup>7</sup> Rent regulation aims “to maintain existing affordable housing and to limit disruptions caused by rapid rent increases.”<sup>8</sup> Rent-control laws, when in effect, tend to center in major cities or coastal areas.<sup>9</sup> However, as the economy recovered following World War II, rent control slowly fell out of common use.<sup>10</sup>

As with most legislation, rent control is a controversial option with two competing arguments.<sup>11</sup> On one side, progressive and tenant-led organizations advocated for revitalizing rent regulations by pushing for state and federal legislative or executive action.<sup>12</sup> Conversely, real-estate groups and landlord-led

---

\* J.D. Candidate, 2025, Indiana University Robert H. McKinney School of Law; B.S. 2022, Eastern Michigan University—Ypsilanti, Michigan. The author thanks Professor Fran Quigley, without whom this Note would not exist.

1. *The Rent is Too Damn High!*, PEOPLE’S ACTION & HOMES GUARANTEE, <https://damnhighrent.com/> [<https://perma.cc/P2JE-GKUV>] (last visited Aug. 26, 2024).

2. *Id.*

3. *Id.*

4. *Id.*

5. John W. Willis, *Short History of Rent Control Laws*, 36 CORNELL L. REV. 54, 79 (1950).

6. *Id.*

7. *Id.*

8. PRASANNA RAJASEKARAN ET AL., URB. INST., RENT CONTROL: WHAT DOES THE RESEARCH TELL US ABOUT THE EFFECTIVENESS OF LOCAL ACTION 1 (2019), [https://www.urban.org/sites/default/files/publication/99646/rent\\_control.\\_what\\_does\\_the\\_research\\_tell\\_us\\_about\\_the\\_effectiveness\\_of\\_local\\_action\\_1.pdf](https://www.urban.org/sites/default/files/publication/99646/rent_control._what_does_the_research_tell_us_about_the_effectiveness_of_local_action_1.pdf) [<https://perma.cc/LBN7-C5GW>].

9. *Id.*

10. *Id.*

11. The Investopedia Team, *Rent Control: Definition, How It Works, Vs. Rent Stabilization*, INVESTOPEDIA.COM (Apr. 30, 2022), <https://investopedia.com/terms/r/rent-control.asp> [<https://perma.cc/XP6Y-FKJK>].

12. *Id.*

organizations argue that rent control disincentivizes landlords from providing rental property, slows investment, and derails innovation within the rental housing market—all of which will negatively impact tenants overall.<sup>13</sup> Only seven states have existing rent-control laws either at a state or local level.<sup>14</sup> Thirty-four states completely disallow rent-control laws from existing within the state.<sup>15</sup> The remaining nine are silent on the issue.<sup>16</sup>

One of the states with a blanket ban on rent-control laws at the municipal level is Indiana.<sup>17</sup> As a state located squarely in the heart of the nation, Indiana’s thriving metropolises and many rural areas make it well situated to implement rent-control laws—but it has not.<sup>18</sup> Indiana, like many other states across the country, is facing a renters’ crisis, which disproportionately impacts Indiana’s most vulnerable residents.<sup>19</sup> A 2024 report from the National Low Income Housing Coalition and Prosperity Indiana found that, across all ninety-two counties in Indiana, there is a statewide shortage “of 139,318 affordable and available units (18,522 more missing units than in 2023)” for “extremely low-income renter households”—thus, there are “only 33.57 . . . rental homes for every 100 extremely low-income households in the state.”<sup>20</sup> The Indianapolis metropolitan area saw a thirty-percent residential price increase in 2022—the highest in the country.<sup>21</sup> As rents increase, low-income residents are displaced because they cannot keep up with the rising costs.<sup>22</sup> While many solutions must work in tandem to address the root of systemic issues with renting in Indiana and across the country, rent control would provide variety, stability, and immediacy to renters in Indiana.<sup>23</sup>

This Note argues that Indiana’s preemptive ban preventing municipalities from creating and passing rent regulations, unless approved by the General Assembly, should be lifted. Whether rental regulations should exist in the state should be a joint decision between municipal governments and the electorate. Part I provides an overview of rent regulations, explaining the two generations of rent control and the theories behind its implementation. Part II looks at the

---

13. *Id.*

14. *Id.*

15. *Id.*

16. *Id.*

17. *Id.*

18. *Id.*

19. *Extremely Low-Income Hoosiers Face a Staggering Shortage of Affordable Homes*, PROSPERITY INDIANA (Mar. 14, 2024, 10:00 AM), <https://www.prosperityindiana.org/Policy-News/13329495> [<https://perma.cc/P2N7-EBCF>] [hereinafter PROSPERITY REPORT].

20. *Id.*

21. Matthew Fultz, *Indianapolis Sees Nation’s Highest Rent Rate Increase*, 13WTHR (Feb. 1, 2023, 10:27 PM), <https://www.wthr.com/article/news/local/indianapolis-sees-nations-highest-rent-rate-increase-homes-apartments-hike/531-9bf8e839-00bd-425e-a299-d2805648482d> [<https://perma.cc/HXN6-T2EK>].

22. Jerusalem Demsas, *I Changed My Mind on Rent Control*, VOX (Dec. 2, 2021, 11:20 AM), <https://www.vox.com/22789296/housing-crisis-rent-relief-control-supply> [<https://perma.cc/4DFX-UANW>].

23. *Id.*

history of rent regulation in the United States and abroad and considers historical and modern judicial challenges to rent control. Part III considers the current state of rent control in the United States. Part IV tailors the discussion to Indiana, looking at Indiana's preemptive ban on rent regulation and the circumstances of renters and rental housing in the state. Finally, Part V argues that rent regulation is legally sound under federal and state law, and the benefits of rent-control laws far outweigh their preconceived or fabricated weaknesses. Therefore, eliminating Indiana's preemptive ban on rent control is necessary to provide renters with a stable and affordable rental market.

## I. OVERVIEW OF RENT REGULATION

### A. *What Is Rent Control Regulation?*

There are two different types, or generations, of rent control regulation.<sup>24</sup> The first generation is most commonly referred to as “rent control,” while the second is called “rent stabilization.”<sup>25</sup> First-generation rent control is more aggressive than its counterpart.<sup>26</sup> First-generation rent control is a “government regulation placed on the rental rate a landlord can charge for a tenant to occupy a rental property.”<sup>27</sup> These laws are usually not statewide and instead are enacted by cities and local municipalities.<sup>28</sup> Very few apartments are still rent-controlled in that the rent is capped at a certain amount.<sup>29</sup> For example, in New York—one of the few states with existing first-generation control laws—less than two percent of apartments are rent-controlled.<sup>30</sup> Rent stabilization, while also a form of rent control, is a more modest restraint.<sup>31</sup> Though rent stabilization still does not exist in abundance, nationwide rent-stabilized units are more common than rent-controlled ones.<sup>32</sup> Rent stabilization allows for fixed increases set by the enacting municipality, but that increase is “usually no greater than a small

---

24. Daniel Thomas Mollenkamp, *Rent Stabilization: What it is, How it Works, Examples*, INVESTOPEDIA.COM (Nov. 30, 2022), <https://www.investopedia.com/rent-stabilization-definition-5204321> [https://perma.cc/8A9W-DXV9].

25. *Id.*

26. *Id.*

27. Nathan Miller, *Rent Control Versus Rent Stabilization: What It All Means For Landlords*, FORBES (May 28, 2021, 8:00 AM), <https://www.forbes.com/sites/forbesrealestatecouncil/2021/05/28/rent-control-versus-rent-stabilization-what-it-all-means-for-landlords/?sh=72e2ce3516fcm> [https://perma.cc/6FPT-E8BJ].

28. The Investopedia Team, *supra* note 11.

29. *Id.*

30. Kimberly Dawn Neumann, *What Is Rent Control? The Holy Grail of Affordable Housing, Explained*, REALTOR.COM (Jan. 12, 2023), <https://www.realtor.com/advice/rent/rent-control-faq/> [https://perma.cc/4N9M-QR2C].

31. Mollenkamp, *supra* note 24.

32. *Rent Stabilization vs. Rent Control: What's the Difference?*, APARTMEMTS.COM (Jan. 25, 2024), <https://www.apartments.com/rental-manager/resources/payments/rent-stabilization-vs-rent-control-whats-difference> [https://perma.cc/L399-3CX2].

percentage.”<sup>33</sup> For example, if an individual signed a rental agreement for a one-bedroom unit that was \$1,200 per month, a local ordinance could mandate that rent cannot go up by more than three percent for the first year of the lease term.<sup>34</sup> So, while a landlord could raise their tenant’s rent during the lease term, that raise could be no more than three percent of \$1,200, or \$36, for that first year.<sup>35</sup> In essence, first-generation rent control mandates that the rent stay the same for an indefinite amount of time, whereas second-generation rent control (stabilization) permits a small increase in rent per year set by state or local governments.<sup>36</sup> Since they are both forms of rent control regulation, the terms utilized throughout this Note are “rent control” or “rent regulation” rather than “rent stabilization.”

### *B. Theory Behind Rent-Control Regulation*

Rent-control regulation has two main goals: to “maintain existing affordable housing and to limit disruptions caused by rapid rent increases.”<sup>37</sup> Rent regulations often promote secondary goals like protecting tenants from eviction, creating mixed-income neighborhoods, and decreasing tenant turnover.<sup>38</sup> Over time, rent regulation laws have evolved to incorporate features ensuring that landlords, even with restrictions, can still receive enough compensation to maintain their properties while taking home a reasonable profit.<sup>39</sup>

Rent control is a controversial topic within housing law and has been since its inception.<sup>40</sup> There are arguments for and against these types of regulations,<sup>41</sup> and these arguments have followed rent-control debates since the policy’s conception.<sup>42</sup> This Note will address these arguments in more detail in Part V.

---

33. Miller, *supra* note 27.

34. This is a hypothetical example. However, *see* NEW YORK CITY RENT GUIDELINES BOARD, NEW YORK CITY RENT GUIDELINES BOARD, 2023–24 APARTMENT/LOFT ORDER #55 (June 21, 2023), <https://rentguidelinesboard.cityofnewyork.us/2023-24-apartment-loft-order-55/> [<https://perma.cc/84H5-6A9G>] [hereinafter NYC GUIDELINES BOARD], which has an increase cap like the one in the example.

35. *Id.*

36. *Rent Stabilization vs. Rent Control: What’s the Difference?*, *supra* note 32.

37. RAJASEKARAN ET AL., *supra* note 8.

38. *Id.* at 4 (noting that “[s]everal studies have found that tenants living in rent-controlled units are less likely to move out than tenants in uncontrolled units . . . indicating these policies are useful in helping tenants avoid de facto evictions caused by rising rents”).

39. *Id.*

40. The Investopedia Team, *supra* note 11.

41. *Id.*

42. Willis, *supra* note 5, at 60.

## II. HISTORY OF RENT-CONTROL REGULATION IN THE UNITED STATES: WORLD WAR I TO TODAY

### *A. History of Rent Control*

Experts believe that rent control can be traced back to Ancient Rome; however, most verifiable history of rent control is not quite that ancient.<sup>43</sup> There are traces of rent control before the twentieth century in Italy with “attempts of the Popes to prevent exploitation of [Jewish people] of Rome by their Christian landlords,” as well as in Medieval France where “rent troubles arose at the time of the Ligue (1592), the Plague (1619) and the Fronde (1652) because the paralysis of commerce and industry by war, revolt or pestilence made it impossible for tenants to pay their rents.”<sup>44</sup> Spain also has a history of rent control from 1499 to 1842 when the country was plagued with housing shortages.<sup>45</sup> Furthermore, in eighteenth-century Portugal, following the “great Lisbon earthquake,” the king ordered that “rents should be frozen at the rates prevailing [before the earthquake] and that increased rents paid since . . . should be refunded.”<sup>46</sup>

The contemporary history of rent regulation began in twentieth-century Europe following the start of World War I and the resulting housing crisis.<sup>47</sup> In August of 1914, France instituted a three-month moratorium on rent, which was consistently renewed until March of 1918, when a more comprehensive law replaced it.<sup>48</sup> Similar, though more limited, moratoriums were adopted in Italy (1915) and Greece (1916).<sup>49</sup> “The first comprehensive rent control law in Europe was the British Act of December 23, 1915.”<sup>50</sup> A rent-control law applying to the Russian Empire was passed in August of 1916, and, in the same year, rent restriction laws were adopted in “Denmark, Norway, Rumania, Hungary, Croatia and Slavonia.”<sup>51</sup> The following year, “Austria, Italy, the Netherlands, Switzerland, Sweden and Germany” also adopted regulations.<sup>52</sup> After the end of World War I, other and newly-existing countries joined the trend.<sup>53</sup>

In the United States, however, “rent control came late and largely on a non-legislative basis.”<sup>54</sup> Rent-regulation bills were introduced in Congress in 1918,

---

43. *Id.* at 59.

44. *Id.* at 60, 64.

45. *Id.* at 65-67.

46. *Id.* at 67.

47. *Id.*

48. *Id.* at 68.

49. *Id.*

50. *Id.*

51. *Id.*

52. *Id.*

53. *Id.* (“Poland adopted a moratorium in December, 1918, and a rent law in 1919. Spain took action in 1919 and 1920.”).

54. *Id.* at 69.

mirroring those in European countries, but no action was taken after they were proposed.<sup>55</sup> While many municipalities proposed rent-regulation legislation, the only significant legislation was passed in New York and the District of Columbia.<sup>56</sup>

By the late 1920s, there was some relaxation in the remaining war-concurrent regulation laws.<sup>57</sup> As rent-control laws started to gain traction because of World War I, the war's end prompted legislatures internationally to relax or eliminate the restrictions.<sup>58</sup> However, "the speed with which and the extent to which rent controls could be relaxed depended largely on the general economic conditions in the country."<sup>59</sup> Thus, in places with low inflation, like Great Britain and Sweden, they were relaxed early; by contrast, in countries where "inflation reached astronomical heights," like Germany, Austria, and Poland, "rents fell to purely nominal figures, so low in proportion to other prices as to be meaningless."<sup>60</sup>

The Great Depression and the prelude to World War II gave rent control a new lease on life.<sup>61</sup> By 1935, many European countries used rent control to combat inflated rent prices.<sup>62</sup> In April of 1941, President Franklin Delano Roosevelt, by executive order, directed the Office of Price Administration and Civilian Supply (OPACS) to "develop programs with the object of stabilizing rents."<sup>63</sup> That July, President Roosevelt wrote to Congress proposing a price- and rent-control statute.<sup>64</sup> Following the attack on Pearl Harbor, the Emergency Price Control Act (EPCA) became law—the first time steps were taken federally to control rents in the United States.<sup>65</sup>

By 1942, the federal regulations had spread rapidly.<sup>66</sup> "By January, 1945, Scranton, Pennsylvania, was the only city of more than 100,000 population not

---

55. *Id.*

56. *Id.* at 70 (explaining that legislation was passed in New York due to insufficient housing with high rent and dangerous conditions, while legislation was passed in the District of Columbia due to the housing shortage because of the war). *See also id.* at n.54 (discussing other rent-control legislation that was passed).

57. *Id.* at 74 (In New York, "the extension of that year limited the applicability of the laws to Albany, Buffalo, Yonkers, and New York City . . . The next year Albany and Yonkers were decontrolled . . . The final extension, made in 1928, cut down the limits of control to apartments renting for \$10 or less per room per month in New York City and \$7 in Buffalo.").

58. *Id.* at 71.

59. *Id.* at 73.

60. *Id.*

61. *Id.* at 76.

62. *Id.*

63. *Id.* at 79; Exec. Order No. 8734, 6 Fed. Reg. 1917 (Apr. 11, 1941), *amended in part* by Exec. Order No. 8875, Fed. Reg. 4483 (Aug. 28, 1941).

64. Willis, *supra* note 5, at 79 ("[W]e are already confronted with rent increases ominously reminiscent of those which prevailed during the World War. This is a development that must be arrested before rent profiteering can develop to increase the cost of living and to damage the civilian morale.").

65. *Id.*

66. *Id.*

under control, and there were only six cities of more than 50,000 population [not under control].”<sup>67</sup> Congress allowed the act to expire in 1947.<sup>68</sup> Following the Act’s expiration, Congress passed the Federal Housing and Rent Act (FHRA), which “lifted rent controls on all housing built after February 1, 1947, and extended the controls on existing housing.”<sup>69</sup> The enactment of the FHRA dropped the proverbial ball of passing legislation to combat rapidly rising residential rents back into the state and local government’s court.<sup>70</sup>

Second-generation rent controls came into effect in the 1970s.<sup>71</sup> But, “second-generation policies were more moderate than the previous efforts.”<sup>72</sup> These regulations were introduced predominantly in large coastal cities with “relatively fixed housing stocks.”<sup>73</sup> At the time, coastal cities “viewed rent control as an easy, available solution to immediately address affordability concerns.”<sup>74</sup> Second-generation regulations largely began because of tenant mobilization, specifically the Harlem rent strikes of 1964–65.<sup>75</sup> By the early 1980s, “about 200 cities in New York, Massachusetts, California, New Jersey, and Maryland had adopted some version of rent control.”<sup>76</sup> Second-generation controls often passed alongside other tenant-protection guarantees relating to “security, maintenance, housing quality, and landlord-tenant relations.”<sup>77</sup> However, as tenants organized for controls, the real-estate industry organized against them.<sup>78</sup> “[I]n the 1990s, industry backlash led to the removal of rent control in Massachusetts, and significant weakening of rent control in California, New York, and elsewhere.”<sup>79</sup> Because of the industry organization, “[r]ent control has not been substantially expanded to new jurisdictions since the 1980s.”<sup>80</sup> The current state of rent-control laws in the United States will be discussed in Part III.

---

67. *Id.*

68. *Id.* at 80.

69. Gabrielle DeNaro, *Welcome to the Jungle, Where the Rent is Too Damn High: Using Rent Regulation in New York City to Maintain An Affordable Housing Stock*, 16 CARDOZO J. CONFLICT RESOL. 939, 943 (2015).

70. *Id.* at 944; *see also* Willis, *supra* note 5, at 79.

71. RAJASEKARAN ET AL., *supra* note 8, at 2.

72. *Id.*

73. *Id.*

74. *Id.*

75. Ameer Chew & Sarah Treuhaft, *Our Homes, Our Future: How Rent Control Can Build Stable, Healthy Communities*, POLICYLINK.ORG (Feb. 2019), [https://www.policylink.org/sites/default/files/OurHomesOurFuture\\_Web\\_08-02-19.pdf](https://www.policylink.org/sites/default/files/OurHomesOurFuture_Web_08-02-19.pdf) [https://perma.cc/E4FU-ZLAG]. (explaining “the Harlem rent strikes of 1964-1965 kicked off a new wave of tenant activism . . . with rent control as a galvanizing issue”).

76. *Id.* at 7.

77. *Id.*

78. *Id.* at 9.

79. *Id.*

80. *Id.*

*B. Historical Challenges: Rent Control Laws Are Not Per Se Physical Takings*

The rise, fall, and rise again of rent regulation in the United States is not without its judicial challenges.<sup>81</sup> Opponents of these laws have argued that rent regulations constitute a physical, or sometimes regulatory, taking under the Fifth Amendment's Takings Clause.<sup>82</sup> The Takings Clause precludes the government from taking private property without just compensation and disallows regulatory violations of a lessor's due process rights.<sup>83</sup>

The most recent challenge to rent regulation before the Supreme Court occurred in 1992.<sup>84</sup> In the early 1990s, there was a split in authority regarding whether rent control ordinances amounted to unconstitutional physical takings under the Fifth Amendment's Takings Clause.<sup>85</sup> A 1992 case, *Yee v. Escondido*, resolved this split.<sup>86</sup> Before the resolution, the Third and Ninth Circuits had held that specific rent-control ordinances, similar to the one in *Yee*, effected unconstitutional physical takings, while the California trial and appellate courts, in deciding *Yee*, had held that they did not.<sup>87</sup>

In *Yee v. Escondido*, John and Irene Yee owned a mobile-home park in Escondido, California.<sup>88</sup> In 1988, the city adopted a rent-control ordinance setting rents back to 1986 levels and prohibiting landlords from increasing rent without approval from the city council.<sup>89</sup> Park owners could apply to the council for rent increases at any time, and the council approved any increases that it determined to be "just, fair and reasonable" when considering a list of eleven nonexclusive factors.<sup>90</sup> The Yees challenged the ordinance as a physical occupation of their property, arguing that the law deprived them "of all use and occupancy of their real property and grant[ed] to the tenants of mobile homes presently in [t]he [p]ark, as well as the successors in interest of such tenants, the

---

81. This section of this Note will address multiple judicial challenges to rent-control laws, including the Supreme Court's decisions in *Yee v. City of Escondido*, 503 U.S. 519 (1992); *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982); *FCC v. Florida Power Corp.*, 480 U.S. 245, 252 (1987); and *Cnty. Hous. Improvement Program, et al. v. City of New York*, 59 F.4th. 540 (2nd Cir. 2023).

82. *Yee v. City of Escondido*, 503 U.S. 519 (1992).

83. U.S. CONST. amend. V. ("[N]or shall private property be taken for public use, without just compensation.").

84. *Yee*, 503 U.S. at 519.

85. *Id.*

86. *Id.* at 536-37.

87. *Id.*

88. *Id.* at 525.

89. *Id.*

90. *Id.* at 524-25 (These factors included "(1) changes in the Consumer Price Index; (2) the rent charged for comparable mobile home pads in Escondido; (3) the length of time since the last rent increase; (4) the cost of any capital improvements related to the pad or pads at issue; (5) changes in property taxes; (6) changes in any rent paid by the park owner for the land; (7) changes in utility charges; (8) changes in operating and maintenance expenses; (9) the need for repairs other than for ordinary wear and tear; (10) the amount and quality of services provided to the affected tenant; and (11) any lawful existing lease.").



right to physically permanently occupy and use the real property.”<sup>91</sup> As such, the Yees argued they were entitled to compensation.<sup>92</sup>

The Supreme Court held in favor of the Escondido ordinance, determining that the “rent control ordinance does not authorize an unwanted physical occupation . . . [i]t is a regulation of petitioners’ *use* of their property, and thus does not amount to a *per se* taking.”<sup>93</sup> The Court cited its precedent of *Loretto v. Teleprompter Manhattan CATV Corp.*, where the Court discussed the Takings Clause to determine that “no taking occurs under *Loretto* when a tenant invited to lease at one rent remains at a lower regulated rent.”<sup>94</sup> Alluding to the underlying idea that a person *chooses* to be a residential lessor, the Court explained that the Yees “voluntarily rented their land to mobile home owners . . . neither the city nor the State compels petitioners, once they have rented their property to tenants, to continue doing so.”<sup>95</sup> In fact, “the Mobilehome Residency Law provides that a park owner who wishes to change the use of his land may evict his tenants, albeit with 6 or 12 months notice.”<sup>96</sup> The Court concluded that “no government has required any physical invasion of petitioners’ property. Petitioners’ tenants were invited by petitioners, not forced upon them by the government.”<sup>97</sup> *Yee* only considered rent-control regulations related to mobile-home parks, and the plaintiffs did not attempt to argue that ordinary rent-control statutes would violate the Takings Clause.<sup>98</sup> However, previous Supreme Court jurisprudence in 1982 in *Loretto* and then five years later in 1987 in *FCC v. Florida Power Corp.* supports the argument that they would not.<sup>99</sup>

While some lower courts have questioned the validity of *Yee*, the Supreme Court has not reevaluated its holding in *Yee*. However, in 2021, the Court in *Cedar Point Nursery v. Hassid* criticized how *Yee* described regulatory takings, explaining that a governmental regulation can still result in a physical taking.<sup>100</sup> But *Cedar Point* emphasized that “[I]mitations on how a business generally open to the public may treat individuals on the premises are readily

---

91. *Id.* at 525.

92. *Id.*

93. *Id.* at 532.

94. *Id.* at 539.

95. *Id.* at 527-28.

96. *Id.* at 528.

97. *Id.*

98. *Id.* at 526 (citing *Pennel v. San Jose*, 485 U.S. 1, 12, n.6. (1988)).

99. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 440 (1982) (noting that the Court has “consistently affirmed that States have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular without paying compensation for all economic injuries that such regulation entails”); *FCC v. Florida Power Corp.*, 480 U.S. 245, 252 (1987) (stating “statutes regulating the economic relations of landlords and tenants are not *per se* takings”).

100. *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 149 (2021) (internal citation omitted) (“Government action that physically appropriates property is no less a physical taking because it arises from a regulation. . . . The essential question is . . . whether the government has physically taken property for itself or someone else—by whatever means—or has instead restricted a property owner’s ability to use his own property.”).

distinguishable from regulations granting a right to invade property closed to the public.”<sup>101</sup> Even under the Court’s broadened interpretation in *Cedar Point*, the previous analysis of rental regulation under the Takings Clause likely remains the same. In *Cedar Point* the Court notes that “the right to exclude is ‘one of the most treasured’ rights of property ownership.”<sup>102</sup> So, following the reasoning of *Yee* that a landlord chooses to rent their property to tenants, and assuming rent-control regulations continue to include provisions that would allow eviction, like the ordinance in *Yee*, rent-control regulations do not violate the treasured principle enunciated in *Cedar Point*.<sup>103</sup>

### *C. Contemporary Challenges to Rent-Control Laws*

In February of 2023, the Second Circuit affirmed the District Court’s dismissal of two constitutional challenges to New York City’s Rent Stabilization Law (RSL).<sup>104</sup> The first case, *Community Housing Improvement Program, et al. v. City of New York*, was brought by two real-estate trade groups, the Community Housing Improvement Program, the Rent Stabilization Association, and the other by a group of individual landlords.<sup>105</sup> The groups challenged the law as a violation of the Fifth Amendment’s Takings Clause and the Fourteenth Amendment’s Substantive Due Process Clause.<sup>106</sup>

The Second Circuit first concluded that the regulation was not a physical taking of the appellant’s property.<sup>107</sup> Citing Supreme Court precedent, the Second Circuit noted that *Cedar Point*’s definition of a physical taking was not present here; “rather, the Landlords voluntarily invited third parties to use their properties, and as the Court explained in *Cedar Point*, regulations concerning such properties are ‘readily distinguishable’ from those compelling invasions of properties closed to the public.”<sup>108</sup> The Second Circuit also determined that the regulation does not constitute a physical taking by compelling landlords “to refrain in perpetuity from terminating a tenancy,” as it “sets forth several

---

101. *Id.* at 157.

102. *Id.* at 149.

103. *Id.*; *Yee*, 503 U.S. at 539.

104. *Cnty. Hous. Improvement Program, et al. v. City of New York*, 59 F.4th. 540, 543 (2nd Cir. 2023) (explaining that the RSL was “enacted in 1969 . . . to address . . . problems resulting from a chronic shortage of affordable housing in the City . . . [and was] designed to prevent excessive rent levels and to ensure that property owners can earn a reasonable return by, among other things, capping rent increases and limiting the legal grounds for evictions”).

105. *Id.* at 544.

106. *Id.*

107. *Id.* at 551.

108. *Id.* (“As the Supreme Court made pellucid in *Yee*, when, as here, ‘a landowner decides to rent his land to tenants’ the States ‘have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular without paying compensation for all economic injuries that such regulation entails.’”).

grounds on which a landlord may terminate a lease.”<sup>109</sup> The Second Circuit dismissed the appellant’s arguments for regulatory taking and due process.<sup>110</sup>

The Second Circuit also affirmed the District Court in *74 Pinehurst LLC v. New York*.<sup>111</sup> The district court consolidated *Pinehurst* with *Community Housing Improvement Program*.<sup>112</sup> The Second Circuit determined that the plaintiffs (rental property owners) had not sufficiently pled a physical taking as “no plaintiff alleges that the RSL forces them to place their properties into the regulated housing market, and it is well-settled that once an owner ‘decides to rent his land to tenants, the government . . . may require the landowner to accept tenants he does not like.’”<sup>113</sup> Further, the property owners had not alleged that they had exhausted all possible eviction methods within the RSL; thus, the Second Circuit could not “say that the RSL ‘compels a landlord over objection to rent his property or to refrain in perpetuity from terminating a tenancy,’” as described by *Yee*.<sup>114</sup>

The Second Circuit also determined that the property owners did not meet the requirements for a facially or as-applied regulatory taking.<sup>115</sup> The plaintiff’s facial claim failed because it did not adequately argue that there was “no set of circumstances . . . under which the RSL would be valid.”<sup>116</sup> The Circuit determined that even if the claim *were* valid, it would fail on the merits because it would not meet the requirements of the Supreme Court’s regulatory takings framework in *Penn Central Transportation Company et al. v. City of New York*.<sup>117</sup> In March of 2023, the Second Circuit heard a third case, *335-7 LLC v. City of New York*, which had similar facts to both *74 Pinehurst* and *Community Housing*, and the Second Circuit affirmed the District Court with the same reasoning.<sup>118</sup>

In all three cases—*Community Housing*, *74 Pinehurst*, and *335-7 LLC*—the plaintiffs petitioned for certiorari to the Supreme Court.<sup>119</sup> In *Community Housing*, the appellants petitioned on May 8, 2023, but the Supreme Court denied certiorari on October 2, 2023.<sup>120</sup> Further, the Supreme Court

---

109. *Id.* at 552.

110. *Id.* at 556-57.

111. *74 Pinehurst LLC v. New York*, 59 F.4th 557 (2nd Cir. 2023).

112. *Id.* at 562.

113. *Id.* at 564.

114. *Id.*

115. *Id.*

116. *Id.*

117. *Id.* at 565-66 (*citing* *Penn Central Transportation Company et al. v. City of New York*, 468 U.S. 104, 124 (1978)).

118. *335-7 LLC v. City of New York*, No. 21-823, 2023 WL 2291511, at \*4 (2nd Cir. Mar. 1, 2023).

119. *Cnty. Hous. Improvement Program v. City of New York*, 59 F.4th. 540 (2nd Cir. 2023); *74 Pinehurst LLC v. New York*, 59 F.4th 557 (2nd Cir. 2023); *335-7 LLC v. City of New York*, No. 21-823, 2023 WL 2291511 (2nd Cir. Mar. 1, 2023).

120. *Cnty. Hous. Improvement Program*, 59 F.4th. at 540, *cert. denied*, 144 S. Ct. 264 (Oct 2, 2023).

consolidated *74 Pinehurst* and *335-7 LLC* in their denial of certiorari on February 20, 2024.<sup>121</sup>

### III. THE STATE OF RENT REGULATION TODAY

Today, most states do not have any kind of rent control “limiting when and by how much landlords can increase rent.”<sup>122</sup> Many states preemptively ban cities and towns from creating rent-control ordinances.<sup>123</sup> Typically, rent can be raised at the end of a lease term, and most states also allow landlords to write into lease agreements an allowance for increases during the lease term.<sup>124</sup> Landlords in all states, however, cannot raise rent in retaliation or due to a discriminatory purpose during the lease term or any more frequently than what is allowed by state or local law.<sup>125</sup>

Seven states and the District of Columbia have some form of rent-control or stability laws: California, Maine, Maryland, Minnesota, New Jersey, New York, and Oregon.<sup>126</sup> Further, while they do not have existing rent regulations, nine states could implement them by state or local legislatures.<sup>127</sup> Finally, thirty-four states categorically disallow rent-control or stabilization ordinances.<sup>128</sup> Thus, in most states, landlords have no limitation on how much they can raise rent, and landlords can increase rent as often as they wish as long as they remain in compliance with existing notice requirements and the residential lease terms.<sup>129</sup>

Of the states that have regulations, some, like New York, have had rent-control laws in place since the Great Depression, while others have only implemented rent stabilization ordinances in the last few years.<sup>130</sup> “Both California and Oregon passed statewide rent stabilization in 2019 . . . and Saint Paul became the first city in the Midwest to enact rent stabilization in 2021.”<sup>131</sup>

---

121. *74 Pinehurst*, 59 F.4th at 557, *cert. denied*, Nos. 22-1130, 2024 WL 674658 (Feb. 20, 2024); *335-7 LLC*, 2023 WL 2291511, at \*1, *cert. denied*, Nos. 22-1170, 2024 WL 674658 (Feb. 20, 2024) (noting that Justice Thomas made a statement on the denial of certiorari, stating that in order for the Court to hear cases such as these the plaintiffs must be able to show that the NYC regulations actually “prevent petitioners from evicting actual tenants for particular reasons” and the challenge requires a “clear understanding of how [NYC] regulations coordinate to completely bar landlords from evicting tenants”).

122. Roberto Valenzuela, *Rent Control Laws by State*, IPROPERTYMANAGEMENT (July 24, 2024), <https://ipropertymanagement.com/laws/rent-control> [<https://perma.cc/BN86-6DD9>].

123. *Id.*

124. *Id.*

125. *Id.*

126. *Id.*

127. *Id.*

128. *Id.*

129. *Id.*

130. Willis, *supra* note 5, at 79.

131. *Rent Stabilization*, POLICYLINK (Feb. 2, 2023), <https://www.policylink.org/resources-tools/tools/all-in-cities/housing-anti-displacement/rent-control> [<https://perma.cc/8QFM-SUVP>].

The remainder of this section will highlight the rent regulations in each of the seven states with rent control.

### A. California

California has both statewide and citywide rent regulations.<sup>132</sup> California does not require a reason for a landlord to increase rent, but it does limit the amount that rent can increase (“5% + [Consumer Price Index (CPI)] or 10%, whichever is lower.”).<sup>133</sup> However, there are certain exceptions.<sup>134</sup> Additionally, at least five cities in California have municipal regulatory ordinances: Los Angeles, Oakland, Sacramento, San Francisco, and San Jose.<sup>135</sup> For example, Sacramento’s Tenant Protection Program determined the “maximum allowable rental rate increase cannot exceed 5 percent plus the change in CPI.”<sup>136</sup> As of July 1, 2023, the “maximum rent increase is 9.2 percent.”<sup>137</sup> In Sacramento, rates for all tenants cannot be increased more than once a year; however, a “[l]andlord can petition [the] City to have [a] hearing examiner review a rent increase above the maximum.”<sup>138</sup>

### B. Maine

Maine does not have statewide regulations but allows cities and towns to create them.<sup>139</sup> Portland, for example, “limits rent increases to a percentage based on the inflation rate.”<sup>140</sup> However, there are cities where there is no rent regulation.<sup>141</sup> Landlords in these cities “can raise the rent by any amount, as often as they choose.”<sup>142</sup> Despite this allowance, there are still limits.<sup>143</sup> Landlords typically cannot increase the rent during the lease term or if the rental unit violates habitability standards.<sup>144</sup>

---

132. Jessica Menefee, *California Rent Increase Laws*, IPROPERTYMANAGEMENT (Dec. 24, 2023), <https://iproperlymanagement.com/laws/california-rent-increases> [<https://perma.cc/AL22-ZJR2>].

133. *Id.*

134. *Id.* (explaining the five exemptions units per California civil law).

135. Menefee, *supra* note 132.

136. *Tenant Protection Program*, CITY OF SACRAMENTO, (July 2023), <https://www.cityof-sacramento.gov/community-development/code-compliance/rental-info-hub/tenant-protection-program> [<https://perma.cc/YP8Y-RKP2>].

137. *Id.*

138. *Id.*

139. Roberto Valenzuela, *Maine Landlord Tenant Rights*, IPROPERTYMANAGEMENT (May 23, 2024), <https://iproperlymanagement.com/laws/maine-landlord-tenant-rights#rent-increases> [<https://perma.cc/NP5Y-D38T>].

140. *Id.*

141. *Id.*

142. *Id.*

143. *Id.*

144. *Id.*

*C. Maryland*

Like Maine, Maryland does not have statewide rent control, but state law allows cities and towns to pass regulations.<sup>145</sup> For example, Takoma Park first adopted its rent stabilization law in 1981.<sup>146</sup> The program was “designed to preserve the city’s affordable housing stock and maintain economic and ethnic diversity by controlling the frequency and amount of increases that may be imposed by a landlord.”<sup>147</sup> Landlords in Takoma Park, whose properties are included under the law, must provide a two-month written notice of a rent increase and cannot increase the rent more than the city’s allowance.<sup>148</sup> For example, in November 2023, the allowance in Takoma Park was 3.7 percent, applying to “all rent increases occurring between July 1, 2023 through June 30, 2024.”<sup>149</sup>

*D. Minnesota*

Minnesota has a relatively recent history of rent control.<sup>150</sup> The state does not have statewide rent-control laws, but it permits local governments to establish them as long as they are approved through general election.<sup>151</sup> In St. Paul, rent increases are limited to three percent for new and existing tenants; however, “[l]andlords can request a Rent Increase Exception to exceed the limit,” if needed.<sup>152</sup> Additionally, in 2021, Minneapolis voted to allow its city council to establish rent regulations.<sup>153</sup> The council formed a “Rent Stabilization Work Group,” which would bring a proposal to voters in the next election cycle.<sup>154</sup>

---

145. Roberto Valenzuela, *Maryland Landlord Tenant Rights*, IPROPERTYMANAGEMENT (May 31, 2024), <https://iproperlymanagement.com/laws/maryland-landlord-tenant-rights#rent-increases> [https://perma.cc/PW35-HWJ4].

146. *Rent Stabilization*, CITY OF TAKOMA PARK, MARYLAND (July 1, 2023), <https://takomaparkmd.gov/government/housing-and-community-development/rental-housing-programs/rent-stabilization/> [https://perma.cc/MZU7-8WAC].

147. *Id.*

148. *Id.*

149. *Id.*

150. Jessica Menefee, *Minnesota Rent Increase Laws*, IPROPERTYMANAGEMENT (Jan. 7, 2024), <https://iproperlymanagement.com/laws/minnesota-rent-increases> [https://perma.cc/2NQA-LUP5].

151. MINN. STAT. § 471.9996 (2023).

152. Menefee, *supra* note 150.

153. *Id.*

154. *Id.*

*E. New Jersey*

New Jersey does not have statewide rent control, but state law allows local governments to create rent-control laws.<sup>155</sup> Over one hundred cities in New Jersey have established rent-control laws.<sup>156</sup> Each city implementing regulations allows for increased amounts based on different numerical data.<sup>157</sup> For example, Atlantic City allows for amounts based on the Consumer Price Index; Edison limits increases to five percent or under; and Elizabeth allows increases of up to three percent but no more than \$20.<sup>158</sup> Moreover, Jersey City and Newark base their allowable increases on the CPI but cap any increase at four percent.<sup>159</sup> Lakewood caps increases at five percent if the tenant pays for heating but 6.5 percent if the landlord pays for heating.<sup>160</sup> Finally, Paterson caps increases at five percent generally but no more than 3.5 percent for seniors and disabled tenants.<sup>161</sup>

*F. New York*

The state of New York has some of the longest-standing rent regulations in the country.<sup>162</sup> New York has both rent-control and rent-stabilization laws at both the state and local levels.<sup>163</sup> There are different rules throughout the state, but the most notable differences are between rent-controlled units inside and outside New York City (NYC).<sup>164</sup> For units outside of NYC, the Division of Housing and Community Renewal (DHCR) “determines a Maximum Rent, and the maximum rate of increase is based on the average of the previous five Rent Guidelines Board adjustments.”<sup>165</sup> For units inside the city, the DHCR establishes a specific “Maximum Base Rent (MBR) for each rent-controlled unit every two years.”<sup>166</sup>

---

155. Jessica Menefee, *New Jersey Rent Increase Laws*, IPROPERTYMANAGEMENT (Jan. 8, 2024), <https://ipropertymanagement.com/laws/new-jersey-rent-increases> [https://perma.cc/R3TB-W9RE].

156. *Id.*

157. *Id.*

158. *Id.*

159. *Id.*

160. *Id.*

161. *Id.*

162. Willis, *supra* note 5, at 70.

163. Roberto Valenzuela, *New York Landlord Tenant Rights*, IPROPERTYMANAGEMENT (June 21, 2024), <https://ipropertymanagement.com/laws/new-york-landlord-tenant-rights#rent-increases-fees> [https://perma.cc/6GNH-XHRM].

164. Valenzuela, *supra* note 122.

165. *Id.*

166. *Id.*

*G. Oregon*

Unlike the previous six states, Oregon has statewide rent control, but state law prohibits local governments from establishing their own rent regulations.<sup>167</sup> For a year-long lease, the state requires ninety days' notice for any increase and limits the amount that landlords can raise their rent to seven percent plus the consumer price index per year—the maximum allowed rent increase for 2024 was ten percent (with some exceptions).<sup>168</sup> Although cities and municipalities in the state are unable to create their own rent-control laws, the Portland City Code requires that if a “[t]enant receives an Increase Notice indicating a Rent increase of 10 percent or more within a rolling 12-month period . . . the Landlord shall pay to the Tenant Relocation Assistance.”<sup>169</sup>

IV. THE STATE OF RENT REGULATION IN INDIANA

Indiana has no statewide rent regulations, and state law prohibits local governments from establishing any through a zoning ordinance or other means unless the Indiana General Assembly authorizes the regulation.<sup>170</sup> The relevant statute reads as follows:

**32-31-1-20.** Privately owned real property; regulation of rental rates

(b) A unit (as defined in IC 36-1-2-23) may not regulate rental rates for privately owned real property, through a zoning ordinance or otherwise, unless the regulation is authorized by an act of the general assembly.<sup>171</sup>

The Indiana General Assembly has essentially “preempted” local governments from being able to pass rent-control laws.<sup>172</sup> Thus, an Indiana landlord raising rent by *any* amount, no matter how high, does not violate the lease term or the Fair Housing Act (FHA) as long as (1) the landlord gives proper notice and (2) the rent increase is not in retaliation to some action by the tenant.<sup>173</sup>

Preemption is a legal maneuver that “limits governments from passing laws that would conflict with laws passed by a higher authority;” thus, “state laws can be preempted by federal laws and local laws can be preempted by both state

<sup>167</sup> Roberto Valenzuela, *Oregon Rent Increase Laws*, IPROPERTYMANAGEMENT (June 28, 2024), <https://ipropertymanagement.com/laws/oregon-rent-increases> [https://perma.cc/U2T3-T842].

<sup>168</sup> *Id.*

<sup>169</sup> PORTLAND CITY CODE § 30.01.085 (2017).

<sup>170</sup> IND. CODE § 32-31-1-20 (2021).

<sup>171</sup> IND. CODE § 32-31-1-20(b) (2021).

<sup>172</sup> *Id.*

<sup>173</sup> Jessica Menefee, *Indiana Rent Increase Laws: What Is & Isn't Legal*, IPROPERTYMANAGEMENT (Jan. 5, 2024), <https://ipropertymanagement.com/laws/indiana-rent-increases> [https://perma.cc/S65Z-4F9F] (referencing IND. CODE § 32-31-8.5-5 and § 32-31-5-4).



and federal laws.”<sup>174</sup> Essentially, a preemptive law is passed by a state “to nullify a municipal ordinance or authority.”<sup>175</sup> Preemptive laws can span various policy areas, including gun regulation, labor laws, environmental reform, and housing issues.<sup>176</sup> Many acts of preemption pit “rural- and suburban-dominated state legislatures against cities with large populations of low wage earners and ethnic minorities.”<sup>177</sup> Preemptive laws, like the one in Indiana, are common in states where a different political cohort controls the state legislature than the local legislature of a large city within the state.<sup>178</sup> Following the November 2022 election, the Indiana State Senate was 40-10, and the Indiana House of Representatives was 70-30, Republicans to Democrats.<sup>179</sup> The Indianapolis City Council, however, as of November 2023, had a Democratic “supermajority” of 19-6.<sup>180</sup> Thus, it is likely that the General Assembly will pass legislation that prevents cities from passing ordinances that do not align with the state’s political majority.

1. *The State of Rental Housing in Indiana.*—As an after-effect of the 2008 recession and foreclosure crisis, which “turned millions of homeowners into renters,” nearly twenty million renter households—across urban, suburban, and rural areas—are currently paying too much for housing, and “about 10 million pay more than half their income on rent.”<sup>181</sup> Across the country, rent increases have outpaced income growth over the last twenty years: “between 2001 and 2015, median rents increased 50 percent, yet incomes have remained flat—and have declined for lower income renters. In places where minimum wages have increased, rents have outpaced wage growth.”<sup>182</sup> Similarly, the amount of money left over after paying rent for the lowest-income renters decreased “19 percent between 2001 and 2016,” leaving renters with little-to-no money to fall back on in case of emergency as “the median savings for cost-burdened renters is just \$10.”<sup>183</sup>

---

174. Guy Yedwab, *Current Issues in Public Policy: The Stable Legal Foundation of Commercial Rent Stabilization*, 20 RUTGERS J.L. & PUB. POL’Y 1, 32 (2022).

175. NICOLE DUPUIS ET AL., *City Rights in an Era of Preemption: A State-by-State Analysis*, NATIONAL LEAGUE OF CITIES (Feb. 2018), <https://www.nlc.org/wp-content/uploads/2017/02/NLC-SML-Preemption-Report-2017-pages.pdf> [<https://perma.cc/2FBZ-FHZJ>].

176. *Id.*

177. *Id.*

178. *Id.*

179. *Indiana State Senate Elections, 2022*, BALLOTPEdia (Nov. 2022), [https://ballotpedia.org/Indiana\\_State\\_Senate\\_elections,\\_2022](https://ballotpedia.org/Indiana_State_Senate_elections,_2022) [<https://perma.cc/6NUS-BSCV>]; *Indiana House of Representatives Elections, 2022*, BALLOTPEdia (Nov. 2022), [https://ballotpedia.org/Indiana\\_House\\_of\\_Representatives\\_elections,\\_2022](https://ballotpedia.org/Indiana_House_of_Representatives_elections,_2022) [<https://perma.cc/224R-PULQ>].

180. Ko Lyn Cheang, *Republicans gain one seat as Democrats retain supermajority on Indy City-County Council*, INDYSTAR (Nov. 8, 2023, 11:14 AM), <https://www.indystar.com/story/news/politics/elections/2023/11/07/indianapolis-city-county-council-election-2023-results-analysis/71424103007/> [<https://perma.cc/PT45-5226>].

181. Chew, *supra* note 75, at 12 (noting that “[t]he vast majority of renters paying unaffordable rent are low-income (78 percent)”).

182. *Id.* at 14.

183. *Id.*

Traditionally, more affordable regions of the country, including metropolitan statistical areas (MSAs) like Indianapolis, “have sustained significant out-of-state interest from those looking to relocate from larger metropolitan cities such as Chicago, IL, New York, NY and Atlanta, Georgia.”<sup>184</sup> This interest in moving from metropolitan hubs like NYC to smaller cities like Indianapolis led to increased median monthly rent and listing prices in these smaller metropolitan areas.<sup>185</sup> There are differing numbers reflecting the actual rent increase between 2021–2022/22–23 in Indianapolis.<sup>186</sup> However, according to HouseCanary, the Indianapolis metropolitan area saw the largest annual increase (by MSA) in median monthly rent price from 2021 to 2022, with the average rent for a single-family unit rising from \$1,300 to \$1,700—a \$400 increase, or a 30.8 percent change.<sup>187</sup>

Like the rest of the country, Indiana has a renting crisis.<sup>188</sup> “Though Indiana is commonly thought of as an affordable place to live when it comes to the availability and cost of housing, the lowest-income Hoosiers nevertheless face housing shortages and high housing costs.”<sup>189</sup> Moreover, despite the general affordability of living in the Midwest compared to more populated coastal cities, Indiana performs below average for the region.<sup>190</sup>

In Indiana, there is a shortage of rental properties that are “affordable and available to extremely low-income households (ELI), whose incomes are at or below the poverty guideline or 30% of their area median income (AMI).”<sup>191</sup> These households, like many low-income households across the country, spend more than half their monthly income on rent.<sup>192</sup> It is common for “severely cost burdened poor households [to be] more likely than other renters to sacrifice other necessities like healthy food and healthcare to pay the rent.”<sup>193</sup> Notably, due to “historical and ongoing injustices that have systematically disadvantaged” people of color in Indiana, minority households are “twice or

---

184. *National Rental Report (Second Half of 2022)*, HOUSECANARY (2022), [https://www.housecanary.com/wp-content/uploads/2023/01/hc\\_rental-report\\_h2-2022\\_min-1.pdf](https://www.housecanary.com/wp-content/uploads/2023/01/hc_rental-report_h2-2022_min-1.pdf) [https://perma.cc/36YE-RCWG].

185. *Id.*

186. *Id.*

187. *Id.*

188. Tamarack Media Cooperative, *Housing Needs by State / Indiana*, NATIONAL LOW INCOME HOUSING COALITION (2023), <https://nlihc.org/housing-needs-by-state/indiana#:~:text=Across%20Indiana%2C%20there%20is%20a,of%20their%20income%20on%20housing> [https://perma.cc/M2WZ-H277].

189. PROSPERITY REPORT, *supra* note 19.

190. *Id.* (“In 2024, Indiana has the second-lowest rate of affordable and available housing for ELI households at 33.57% and far below the average of 39.63% for states in the region. Indiana’s rate of 75.65% of ELI households who experience severe housing cost burdens in 2024 is the highest of any Midwest state and above the regional average of 69.72%.”).

191. Tamarack Media Cooperative, *supra* note 188.

192. *Id.*

193. *Id.*

more as likely as white households to be extremely low-income renters.”<sup>194</sup> Further, these households are the most likely to face eviction actions.<sup>195</sup>

In Indiana, 199,050, or twenty-six percent, of renter households are ELI, and seventy-one percent face a severe cost burden.<sup>196</sup> Moreover, the maximum income for a four-person, extremely low-income household in the state of Indiana is \$26,500, but the annual household income needed to afford a two-bedroom rental home in the state, according to the Department of Housing and Urban Development (HUD) fair market rent (FMR), is \$39,526.<sup>197</sup> According to the HUD Fiscal Year 2023 Fair Market Rent Documentation System, the fair market rent by unit bedrooms for Marion County, Indiana, is as follows: Efficiency/ Studio: \$771; One-Bedroom: \$897; Two-Bedroom: \$1,065; Three-Bedroom: \$1,397; Four Bedroom: \$1,671.<sup>198</sup> Thus, with the rising average rent, renters, especially those with extremely low income, face a rental crisis in Indiana and are likely being charged more than the fair-market rate for the unit they are renting.<sup>199</sup> Recognizing this problem, Part V of this Note presents a solution.

#### V. THE INDIANA GENERAL ASSEMBLY SHOULD LIFT THE PREEMPTIVE BAN ON CITIES AND MUNICIPALITIES PASSING RENT-CONTROL REGULATIONS.

##### A. Rent Control Is Legally Sound

1. *Federal Law*.—As discussed *supra*, rent-control statutes have been met with many judicial challenges.<sup>200</sup> In many of these cases, opponents of rent-control laws have issued three main federal challenges to the regulations: the first two under the Fifth Amendment Takings Clause and the third under the Due Process Clause.<sup>201</sup> The Supreme Court issued a narrow holding in *Loretto*, where it affirmed “the traditional rule that a permanent physical occupation of property is a taking” that entitles the property owner to compensation.<sup>202</sup> The

---

194. PROSPERITY REPORT, *supra* note 19 (“62% of Black households are renters and 23% are extremely low-income renters. 45% of Latino households are renters and 10% are extremely low-income renters. By contrast, 24% of white households are renters and 6% are extremely low-income renters.”).

195. *Id.*

196. Tamarack Media Cooperative, *supra* note 188.

197. Program Parameters and Research Division, HUD, *FY 2023 Indianapolis-Carmel, IN HUD Metro FMR Area FMRs for All Bedroom Sizes*, HUD USER, [https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2023\\_code/2023summary.odn?&year=2023&fmrtype=Final&selecton\\_type=county&fips=1809799999](https://www.huduser.gov/portal/datasets/fmr/fmrs/FY2023_code/2023summary.odn?&year=2023&fmrtype=Final&selecton_type=county&fips=1809799999) [https://perma.cc/ZH36-YJWR].

198. *Id.*

199. *Id.*

200. *See also supra* note 81.

201. U.S. CONST. amend. V (“No person shall. . .be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.”).

202. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 441 (1982).

Court, however, did not “question the equally substantial authority upholding a State’s broad power to impose appropriate restrictions upon an owner’s use of his property.”<sup>203</sup> The Court affirmed this holding in 1987 in *Florida Power*, holding that, under *Loretto*, no taking occurs when an invited tenant remains at a lower rent because of a government-regulated rate.<sup>204</sup> *Yee* reaffirmed both holdings as the Court determined that “because the Escondido rent control ordinance does not compel a landowner to suffer the physical occupation of his property, it does not effect a *per se* taking under *Loretto*.”<sup>205</sup>

The holding in *Yee* remains good law.<sup>206</sup> Therefore, if a landlord chooses to enter into a residential landlord-tenant agreement, it is not a physical taking, for the purposes of the Fifth Amendment, if an ordinance regulates the amount of rent they can charge.<sup>207</sup> Landlords, even those under rent-control regulations, continue to have a choice as to whether they rent their property to tenants, and—assuming landlords abide by all local notice requirements—they can choose to no longer do so.<sup>208</sup>

The Supreme Court has not entertained a substantive due process claim in relation to rent-control laws.<sup>209</sup> However, in *Community Housing*, the Second Circuit addressed a due process argument.<sup>210</sup> The Circuit concluded that a due process challenge was not available to petitioners because Supreme Court precedent has determined that “the Due Process Clause cannot ‘do the work of the Takings Clause’ because ‘where a particular Amendment provides an explicit textual source of constitutional protection against a particular sort of government behavior, that Amendment, not the more generalized notion of substantive due process, must be the guide for analyzing these claims.’”<sup>211</sup> Furthermore, the Second Circuit in *Community Housing* determined that even if petitioners could bring a due process challenge, it would fail.<sup>212</sup> Following Supreme Court precedent in *Pennell v. San Jose*, the Second Circuit determined that for a rent-regulation statute to be valid, it must pass rational basis review.<sup>213</sup> Since “rational basis review is not a mechanism for judges to second guess legislative judgment even when, as here, they may conflict in part with the

---

203. *Id.*

204. *FCC v. Florida Power Corp.*, 480 U.S. 245, 252-53 (1987).

205. *Yee v. City of Escondido*, 503 U.S. 519, 538.

206. *Id.*

207. *Id.*

208. *Id.*

209. *But see id.*, wherein the petitioners attempted to raise such an argument; however, the Court rebuked it since it had not been raised prior to the appeal.

210. *Cnty. Hous. Improvement Program v. City of New York*, 59 F.4th. 540, 556 (2d Cir. 2023).

211. *Id.* (internal citation omitted).

212. *Id.*

213. *Id.*

opinions of some experts,”<sup>214</sup> the Second Circuit determined that the legislation at issue was “primarily enacted to permit low- and moderate-income people to reside in New York City when they otherwise could not do so,” and this motivation (“continuity and stability”) is a valid basis for enacting a law.<sup>215</sup> Thus, the law would pass rational basis scrutiny.<sup>216</sup> Moreover, the Supreme Court denied certiorari in the three cases where the Second Circuit made these determinations in early 2023 rather than hearing the cases and finding any fault in the Second Circuit’s reasoning.<sup>217</sup>

2. *Indiana Constitutional Law*.—Lifting the preemptive ban on municipalities establishing rent regulation in Indiana would not violate the Indiana Constitution. Indiana has a constitutional provision guaranteeing freedom of contract, and the Indiana Supreme Court has consistently recognized that parties have the freedom to enter into contracts.<sup>218</sup> However, rent-control and stabilization laws do not impede freedom of contract for the same reason that the Supreme Court in *Yee* determined that rent regulations do not constitute a physical taking: landlords and tenants are free to enter into a residential lease agreement.<sup>219</sup> Any restrictions on how much rent can increase would just become another contractual requirement, like the thirty-day notice requirement to modify a lease in the state.<sup>220</sup>

Furthermore, like the U.S. Constitution, the Indiana Constitution also has a Takings Clause.<sup>221</sup> Indiana Supreme Court jurisprudence has read Indiana’s Takings Clause to mirror how the United States Supreme Court approaches takings issues.<sup>222</sup> Thus, since there are no perceived violations of the Takings Clause with rent-control laws under the U.S. Constitution, they would be valid in Indiana under the Indiana Constitution’s Takings Clause.<sup>223</sup> Having

---

214. *Id.* (citing *Pennel v. San Jose*, 485 U.S. 1, 11-12, which noted that “[t]he standard for determining whether a state price-control regulation is constitutional under the Due Process Clause is well established: ‘Price control is unconstitutional . . . if arbitrary, discriminatory, or demonstrably irrelevant to the policy the legislature is free to adopt’” (internal citation omitted)).

215. *Id.* at 545.

216. *Id.*

217. *Id.* at 540, *cert. denied*, 144 S.Ct. 264 (Oct. 2023).

218. *Hartman v. BigInch Fabricators & Constr. Holding Co.*, 161 N.E.3d 1218, 1221 (Ind. 2021) (“We recognize parties’ freedom to enter into contracts; and we presume, when construing a contract, that its terms represent the parties’ freely bargained agreement.”).

219. *Yee v. City of Escondido*, 503 U.S. 519, 533 (1992).

220. IND. CODE § 32-31-5-4 (2021) (“Unless otherwise provided by a written rental agreement between a landlord and tenant, a landlord shall give the tenant at least thirty (30) days written notice before modifying the rental agreement.”).

221. IND. CONST. art. I, § 21. (“No person’s property shall be taken by law, without just compensation; nor, except in case of the State, without such compensation first assessed and tendered.”).

222. *State of Indiana v. Kimco of Evansville, Inc.*, 902 N.E.2d 206, 211 (Ind. 2009). (“In *Biddle v. BAA Indianapolis*, we reviewed Indiana’s eminent domain language and harmonized our takings analysis with the federal approach spelled out in *Lingle* and *Penn Central*.”) (internal citations omitted).

223. *Yee*, 503 U.S. at 533.

determined that rent-control laws are legally sound, the remainder of this Note turns to the policy implications of implementing rent control in Indiana.

*B. Lifting Indiana’s Preemption of Rent Regulation Is in  
the Best Interest of Public Policy*

There has been some movement in both the political and legal world over the past decade, especially since the COVID-19 pandemic, pushing for some kind of rent control across the country.<sup>224</sup> During the COVID-19 pandemic, many jurisdictions suspended or restricted evictions, leading to a “flurry of lawsuits brought by landlords, property managers, lobbyists, and developers,” asserting these moratoriums violated their protected rights.<sup>225</sup> However, the vast majority of the public was not on the side of the landlords and the lobbyists, as “one poll showed that eighty-nine percent of Americans supported banning evictions nationwide, while another found eighty percent supporting such measures.”<sup>226</sup>

Rent control, while not common, is not unpopular, and it is winning support across the country.<sup>227</sup> “Polling conducted in 2019 by Data for Progress found that a majority of likely voters, including a majority of independents, support rent control, with just 1 in 5 opposing such a measure.”<sup>228</sup> “Across states and municipalities, there is a flurry of ongoing rent-control activity, including vibrant campaigns in California, Florida, and Michigan.”<sup>229</sup> In 2021, Michelle Wu was elected mayor of Boston “on a platform of rent control, which enjoys a two-to-one level of support among likely voters.”<sup>230</sup> Furthermore, “[i]n Illinois, the Lift the Ban campaign is pushing to reverse the 1997 statewide ban on rent control, passed as part of the landlord resistance campaign.”<sup>231</sup>

1. *The Benefits of Rent Control.*—There are a handful of arguments on either side of the debate about whether rent regulation should exist; however, the benefits of rent control far outweigh its fabricated weaknesses. There are numerous benefits to instituting rent-control measures, including creating

224. *The Rent is Too Damn High!*, *supra* note 1.

225. Nino C. Monea, *Eviction Moratorium Litigation: What Courts Said, and What Courts Missed*, 51 U. BALT. L. REV. 185, 188. (2022).

226. *Id.* (internal references omitted).

227. Fran Quigley, *Why We Need Rent Control*, JACOBIN (July 2023), <https://jacobin.com/2023/07/rent-control-arguments-myths-housing-real-estate> [<https://perma.cc/6Y2Y-A5MQ>].

228. Mark Paul, *Economists Hate Rent Control. Here’s Why They’re Wrong.*, THE AMERICAN PROSPECT (May 16, 2023), <https://prospect.org/infrastructure/housing/2023-05-16-economists-hate-rent-control/> [<https://perma.cc/2D35-S7YC>].

229. Quigley, *supra* note 227; *see also* Samuel Robinson, *Detroiters Want to End Michigan’s Ban on Rent Control*, AXIOS DETROIT (Aug. 18, 2022), <https://www.axios.com/local/detroit/2022/08/18/detroiters-end-michigan-ban-rent-control> [<https://perma.cc/K6DJ-U7ZG>] (discussing attempts to lift the preemptive rent control ban in Michigan).

230. Quigley, *supra* note 227.

231. *Id.*

stability within the rental market, providing fast and widespread relief to renters, preserving economic diversity, being a cost-effective policy approach, and securing other tenant protections.<sup>232</sup>

First, rent control creates stability within the rental market.<sup>233</sup> Less fluctuation of rent costs and more predictability for when and by how much rent will increase can lead to less turnover in residents and allow renters to have more financial stability.<sup>234</sup> This is because renters will know when and by how much rent will increase, allowing them to plan ahead and save to stimulate the economy in other ways.<sup>235</sup> A study in San Francisco found that rent control “increased tenants’ probability of staying in their homes by nearly 20 percent and that without the financial savings that rent control provided, [these tenants] would otherwise have left the city.”<sup>236</sup> Furthermore, studies show that the stabilizing effects of rent regulation are “greatest for older tenants and long-term tenants,” suggesting rent control can help support communities that grow with their population.<sup>237</sup>

Second, rent control provides widespread relief to renters.<sup>238</sup> “[I]n cities with active rent control, the number of households with stabilized rents far exceeds households living in public and subsidized housing.”<sup>239</sup> Unlike other housing programs, rent control can provide immediate relief; because it “covers private rental housing where the vast majority of renters live, it outperforms all other affordable housing tools in terms of scale of impact.” Thus, instead of tenants waiting for space to open up for a housing voucher or other government-subsidized relief, widespread rent regulation opens up more housing opportunities for everyone.<sup>240</sup> Furthermore, while rent control helps tenants most in need at a higher rate, it applies to renters of all incomes. “Universal policies like rent control can be more effective at promoting largescale social equity than means-tested policies that are available only to a small fraction of those in need.”<sup>241</sup>

---

232. *Id.*; Chew, *supra* note 75; NICOLE MONTOJO, ET AL., *Opening the Door for Rent Control, OTHERING & BELONGING INST.* (Sept. 2018) <https://belonging.berkeley.edu/opening-door-rent-control> [<https://perma.cc/EE23-DUF2>].

233. Chew, *supra* note 75, at 24.

234. *Id.*

235. *Id.*

236. MONTOJO, *supra* note 232.

237. *Id.*; *see also* Chew, *supra* note 75, at 24 (noting that “the stability created by rent control disproportionately benefits low-income households, people of color, seniors, and families with children, who are most at risk of displacement and forced moves and their negative consequences,” and citing examples from Los Angeles, NYC, and Santa Monica).

238. Quigley, *supra* note 227.

239. *Id.*

240. *Id.*

241. Chew, *supra* note 75; *see also* *Examining the Unintended Consequences of Rent Control Policies in Cities Across America*, NATIONAL APARTMENT ASSOCIATION (March 2023), <https://www.naahq.org/examining-unintended-consequences-rent-control-policies-cities-across-america> [<https://perma.cc/LW3Y-2K4Z>] (discussing how higher-income residents may also benefit from rent-control policies).

Third, rent control helps preserve economic diversity.<sup>242</sup> “Egregious rent increases continue to place more of the existing housing stock out of reach for lower-income tenants,” increasing an already overwhelming gap in housing affordability.<sup>243</sup> As rent prices have risen, people have had to move out of high-cost areas while higher-income residents have moved in, practically eliminating economic diversity in a given area.<sup>244</sup> Rent control can help prevent this and help to “maintain economic diversity and integration” by helping to prevent displacement that would ultimately lead to more exclusionary, economically-segregated cities.<sup>245</sup>

Fourth, rent control is cost-effective as “it costs little to implement and reduces the strain on government budgets due to the housing crisis.”<sup>246</sup> Unlike other assistance programs, “renter protections can be established as a matter of law, and the administration of rent control is typically paid for through modest per-unit fees.”<sup>247</sup> Rent control is a fast, minimally costly way to provide relief for all tenants in an affected area.<sup>248</sup>

Finally, many measures in place to protect tenants would be ineffective without rent control.<sup>249</sup> For example, one of the most popular legislative proposals to protect tenants against eviction is requiring landlords to have “good cause” to evict their tenants.<sup>250</sup> Good-cause or just-cause eviction laws “prohibit landlords from arbitrarily ending rental agreements and outline specific reasons for which landlords can evict tenants.”<sup>251</sup> In places without good-cause eviction protections, “landlords may evict tenants for any reason or no reason at all” as long as they abide by proper notice requirements.<sup>252</sup> Essentially, just-cause eviction protections are presumptive renewals of leases, as they allow renters to feel secure in the fact that, as long as they are abiding by their lease terms, they cannot be evicted on the whim of their landlord.<sup>253</sup> However, without rent

---

242. MONTJO, *supra* note 232.

243. *Id.*

244. *Id.* (“A study of the effects of lifting rent control in Cambridge, Massachusetts found that after the policy’s repeal, not only did the value of formerly stabilized properties increase by 18 to 25 percent in ten years, but the value of non-controlled units increased by 12 percent.”).

245. *Id.*; *see also* Chew, *supra* note 75 (“Rent control is a main factor allowing the remaining low-income households in San Francisco and gentrifying areas of New York City to continue living in their neighborhoods.”).

246. Chew, *supra* note 75.

247. MONTJO, *supra* note 232.

248. *Id.*

249. Demsas, *supra* note 22.

250. Julieta Cuellar, *Effect of “Just Cause” Eviction Ordinances on Eviction in Four California Cities*, PRINCETON UNIV. J. PUB. & INT’L AFF. (May 21, 2019), <https://jpia.princeton.edu/news/effect-just-cause-eviction-ordinances-eviction-four-california-cities> [<https://perma.cc/AKA7-2YM2>].

251. *Id.* (“Common just causes for eviction include failure to pay rent, failure to abide by lease requirements, owner move-in, and owner seeking to permanently remove unit from housing market.”).

252. *Id.*

253. *Id.*



control or stabilization measures, a landlord can continue to renew a tenant's lease in compliance with good-cause eviction requirements but still effectively evict tenants by raising the rent for a unit to the point that it is no longer affordable.<sup>254</sup> Without rent-stabilization measures, even with good-cause eviction requirements, a landlord could raise a tenant's rent by 200 percent and effectively make the tenant unable to comply with lease requirements—paying rent—so that they can then evict the tenant for “good cause.”<sup>255</sup>

2. *Weaknesses of Anti-Rent Control Arguments.*—The underlying theme of all arguments opposing rent control is that rent regulations will disincentivize landlords from creating rental housing.<sup>256</sup> As such, the main arguments against rent control are as follows: (1) it will reduce the supply of rental housing; (2) it will increase rent in nonregulated units; and (3) maintenance and upkeep in regulated units will fall short.<sup>257</sup> Each of these arguments is shakily established and can be combatted.

First, opponents of rent control legislation fear that introducing rent regulations will depress the housing supply because there will be less financial incentive for new construction.<sup>258</sup> This idea is grounded in an Economics 101 argument: “the lower the price of a good, the less incentive that for-profit providers will have to produce that good.”<sup>259</sup> Many professional economists utilize this argument to oppose rent control.<sup>260</sup> “There’s just one problem: [this argument] fail[s] to hold when it comes to the real world.”<sup>261</sup> Housing researchers from major universities in California and Minnesota have reviewed available data and found “the argument that ‘rent control has negative effects on the development of new housing [is] generally not supported by the research.’”<sup>262</sup> “Other studies have repeatedly confirmed that rent control doesn’t affect the overall supply of housing.”<sup>263</sup> As the data has been uncovered, economists and academics have pivoted to urging government agencies to institute federal rent regulations.<sup>264</sup>

It is even possible that having affordable housing, through rent control, in an area will increase supply because “if housing developers cannot generate

---

254. Demsas, *supra* note 22.

255. *Id.*

256. Chew, *supra* note 75.

257. *Id.*

258. Paul, *supra* note 228.

259. Quigley, *supra* note 227; *see also* Paul, *supra* note 228.

260. *See generally* Paul, *supra* note 228, for a brief explanation of how economists have treated rent control from 1946 to today.

261. *Id.*

262. Quigley, *supra* note 227.

263. Paul, *supra* note 228 (discussing how loopholes for landlords to “take advantage of poorly written rent control laws that allow them to convert existing rentals into condos to better capture price increases and skirt the intentions of rent control laws” could be easily closed).

264. *Id.*; *see also* Letter from Jamila Michener, Dept. Gov and School of Pub. Policy, CORNELL UNIV., to Director Thompson and colleagues, FHFA (July 28, 2023).

extra profit through rent increases, it creates an incentive to build more units.”<sup>265</sup> “New York City’s most robust periods of building occurred during the 1920s and mid-twentieth century when rent control regulations were strictly enforced.”<sup>266</sup> To borrow another Economics 101 lesson: “price controls can actually spur an *increase* in supply.”<sup>267</sup> Without rent control, housing developers have unrestrained power in the market and “can maximize profits by raising rents on the apartments they already own”; if rent control restricts that option, however, “developers have to go to Plan B if they want to make more money: [b]uild more units.”<sup>268</sup> Since “an enormous contributor to the current housing supply problem is the overdevelopment of luxury housing and landlords keeping units vacant in search of higher rents,” rather than creating more housing, “rent control would push market forces away from higher-end construction toward what is needed.”<sup>269</sup>

Moreover, if there were to be, as opponents fear, a problem regarding construction rates following a municipality passing a rent-regulation ordinance, that municipality could create tax incentives or other programs to build and develop rental housing as needed.<sup>270</sup> Overall, while there is no assurance that introducing rent control will keep housing development rates the same, there is also no assurance that it will not. There is, however, ample evidence that “rent control succeeds brilliantly in its core goal: stopping huge rent increases.”<sup>271</sup>

Second, despite arguments in the alternative, “rent control is not the chief cause of rents increasing in non-regulated units and can even be protective against such increases.”<sup>272</sup> While it is possible that non-regulated units may be more expensive than their regulated counterparts, the most common kinds of rent regulation, as discussed *infra* Part III, are those that cap how much a landlord could increase rent to a specific percentage (calculated based on a multitude of attributing factors, such as the Consumer Price Index, an arbitrary percentage, or how much a tenant is contributing with utilities) and apply to an entire municipality.<sup>273</sup> When these regulations are implemented, the concern

---

265. Chew, *supra* note 75, at 23 (There is evidence of this in California, “where overall production is too low, but cities with rent control are building far more apartments than cities without regulations.”).

266. Quigley, *supra* note 227.

267. Gary Painter, *No, rent control doesn’t always reduce the supply of housing*, LA TIMES (Oct. 2018) <https://www.latimes.com/opinion/op-ed/la-oe-painter-rent-control-economist-20181031-story.html> [<https://perma.cc/VQW9-5QY6>].

268. *Id.*

269. Quigley, *supra* note 227 (citing Painter, *supra* note 267).

270. *Tax Incentives for New Construction and Substantial Rehabilitation*, LOCAL HOUSING SOLUTIONS (Jan. 2024), <https://localhousingsolutions.org/housing-policy-library/tax-incentives-for-new-construction-and-substantial-rehabilitation/> [<https://perma.cc/FH68-CWEJ>].

271. Quigley, *supra* note 227.

272. Chew, *supra* note 75, at 23.

273. *Id.*

that a neighboring property will be more expensive because it is not similarly regulated dissipates.<sup>274</sup>

Third, the argument that landlords will fail in maintaining their properties because they are not returning enough of a profit to do so fails for two reasons: (1) there is no evidence of such a thing occurring, and (2) tenant protections are in place to avoid this issue.<sup>275</sup> First, no evidence exists that rent-control regulations lead to deficiencies in maintaining regulated units.<sup>276</sup> In New Jersey, “rent control had no negative impact on plumbing, a critical health and safety issue,” and similarly, “[i]n Washington, DC, the share of physically deficient units quickly declined after rent stabilization.”<sup>277</sup> Second, tenant protections in Indiana, specifically Indiana’s warrant of habitability, require landlords to maintain their properties in a habitable condition.<sup>278</sup> This warranty applies regardless of whether the landlord is turning a profit and is an implicit part of the agreement signed between tenant and landlord.<sup>279</sup> A landlord should not enter into a lease agreement if they cannot afford to maintain the property. Furthermore, there is evidence that when “strong eviction protections are in place,” which, as discussed previously, rent regulation implicitly encourages, “rent control can provide tenants with leverage to attain improved conditions.”<sup>280</sup> For example, “[i]n Washington DC [after the implementation of rent regulation] 61 percent of tenants said they were more willing to insist on repairs.”<sup>281</sup>

Thus, while there are proposed drawbacks to rent-control legislation, these drawbacks do not outweigh the benefits. Indiana, along with the rest of the country, is facing a rent crisis; actual rent is too high compared to what the HUD determines the fair market value of rent in the area to be, and there are no current solutions to this problem.<sup>282</sup> Rent-control legislation is a widespread solution to a widespread problem.<sup>283</sup> There is no reason why cities should not be able to make the decision or to let their voters decide to implement rent-control regulations and protect their renters.

### *C. Finding a Solution: How Rent Regulations Could Be Implemented in Indiana*

Suppose the Indiana General Assembly were to lift the state’s preemptive ban on rent-control regulations and allow cities and municipalities to create and

---

274. *Id.*

275. *Id.*

276. *Id.*

277. *Id.*

278. IND. CODE § 32-31-8-5 (2021).

279. *See id.*

280. Chew, *supra* note 75, at 23.

281. *Id.*

282. HUD USER *supra* note 197.

283. Quigley, *supra* note 227.

pass rent-control legislation. What form should that legislation take? There is no cohesive approach to rent control—even among the seven states that have it.<sup>284</sup> Thus, when pushing for legislative change, looking at existing legislation in different forums is imperative to see what could work here and now.

Because the General Assembly currently preempts rent control,<sup>285</sup> it is unlikely that Indiana would ever be able to adopt a comprehensive statewide rent-control plan. However, it is possible that, as is the case in other states, cities within Indiana (such as Indianapolis, Fort Wayne, and Bloomington, to name a few) could pass rent-stabilization ordinances that cover their metropolitan areas.<sup>286</sup> For example—to compare to the only state in the Midwest that has an existing form of rent control—a city like Indianapolis could adopt a plan like the one in St. Paul, Minnesota, and limit rent increases to three percent per year while still allowing for the possibility of a higher increase at a landlord's request.<sup>287</sup>

Conversely, multiple municipalities in Indiana could adopt different regulations that make sense for their areas and their populations of renters, like what exists in New Jersey.<sup>288</sup> Thus, Fort Wayne could allow for increases based on the Consumer Price Index (like Atlantic City), and Evansville could limit increases to five percent or under (like Edison).<sup>289</sup> Other municipalities could pass legislation that varies how much an individual lease can increase based on how many utilities the tenant versus the landlord is responsible for (like Lakewood).<sup>290</sup> Moreover, city and county legislatures could propose rent-stabilization legislation as a ballot measure and allow the electorate to vote yes or no on implementing rent stabilization in their area.<sup>291</sup>

Experts who have argued for rent stabilization in other localities have also presented ideas for how rent stabilization laws could be enacted to survive different legal challenges and general opposition.<sup>292</sup> One author suggested that in Colorado, another state that preempts rent control, “municipalities could include a sunset clause in their ordinances” and “set a point in time for when the law will expire” as a way to “help ease concerns about the permanence of

---

284. Valenzuela, *supra* note 122.

285. IND. CODE § 32-31-1-20 (2021).

286. *See, e.g.*, Menefee, *supra* note 150 (discussing municipal ordinances in Minnesota); *see also* Menefee, *supra* note 155 (discussing municipal ordinances in New Jersey).

287. ST. PAUL CODE OF ORD. § 193A.04 (2022).

288. Menefee, *supra* note 155.

289. *Id.*

290. *Id.*

291. Menefee, *supra* note 150 (noting examples of ballot measures).

292. Virginia Sargent, *Let Cities Decide: End Colorado's Prohibition on Rent Regulation*, 92 U. COLO. L. REV. 337, 365-66 (2021); *see also* Jeffrey James Minton, *Rent Control: Can and Should It Be Used to Combat Gentrification?*, 23 OHIO N.U.L. REV. 823 (1997) (discussing different policy proposals for how rent control can and should be utilized to combat gentrification).

regulation in the housing market and encourage short-term experimentation by municipalities.”<sup>293</sup>

Indiana rent-control policies should limit the amount that landlords can increase rent, based on either the Consumer Price Index or the general inflation rate, but still have a maximum allowable increase.<sup>294</sup> A maximum limit assures that—even in years when inflation might astronomically rise due to national conflict or emergency—renters are not burdened by unreasonable rent increases on top of dealing with the national emergency in their day-to-day lives.<sup>295</sup> The maximum percentage can vary depending on the type of services that the landlord provides.<sup>296</sup> For example, if utilities are included in rent, a landlord might be permitted to increase rent at a higher percentage—depending on how general utility costs change—than a landlord for a unit wherein utilities are not included.<sup>297</sup> This way, landlords who provide utilities can profit, even if utility costs change. However, landlords not providing utilities do not get a windfall, and their tenants must also cover utility costs.<sup>298</sup>

Furthermore, municipalities that implement rent-control ordinances should create a board—which includes both tenant and landlord representatives—to oversee landlord-tenant relations regarding rent control.<sup>299</sup> A neutral board allows landlords to petition for a higher percentage if they can provide proof that a higher increase is necessary (i.e., if the landlord needs to replace heating or cooling systems or something else that is essential to the renting experience) and allows tenants to express concerns or needs for lower increases.<sup>300</sup> A board could make sure that rent pricing decisions are not made in a vacuum with a bias one way or the other.<sup>301</sup> Moreover, municipalities should create a provision in the act or ordinance they are creating to institute rent control that annually, or after a designated amount of time, requires the governing body to reevaluate the percentages that govern how much rent can be increased so that they can make sure the policy is still working to the benefit of tenants and responsible landlords.<sup>302</sup>

Regardless of what measure would be adopted or whether the electorate would or would not choose to adopt it, it would be a decision that local governments could make based on the needs of their smaller cohort of

---

293. Sargent, *supra* note 292.

294. For an example of an ordinance with a maximum increase amount, see Menefee, *supra* note 150 (citing ST. PAUL CODE OF ORD. § 193A.04 (2022)).

295. See Willis, *supra* note 5, at 54 (providing examples of situations where national emergencies have led to housing shortages and tenants’ inability to pay rent).

296. See Menefee, *supra* note 155 (discussing an example of an ordinance dependent on what the landlord pays).

297. Menefee, *supra* note 155.

298. See, e.g., NYC RENT GUIDELINES BOARD, *supra* note 34.

299. *Id.*

300. See, e.g., *id.*

301. *Id.*

302. *Id.*

constituents. This is preferable to the Indiana General Assembly taking a broad brush and disallowing rent stabilization measures altogether.<sup>303</sup>

#### CONCLUSION

This Note argued that the Indiana General Assembly should lift the preemptive ban on rent regulations in Indiana and allow cities and municipalities to, with input from the electorate, decide to implement rent-control laws for themselves when and where necessary. To argue this, the Note examined the history of rent control in the United States, starting with World War I and going to contemporary judicial challenges, where the Supreme Court recently decided to deny certiorari. It then contemplated existing rent-control ordinances throughout the country before considering the nonexistence of rent control in Indiana. Finally, this Note weighed the pros and cons of rent control and looked at how it could be implemented in Indiana without infringing on the rights and abilities of landlords.

As this Note discussed, there is a housing crisis within the United States—one that Indiana does not escape.<sup>304</sup> Federal rent control has been tried and tested in times of crisis during the first half of the twentieth century.<sup>305</sup> And state and local rent control is something that, though there is an unfortunately small sample size, has proven effective in multiple places throughout the United States.<sup>306</sup> Just because rent control is not widespread does not mean it does not work.<sup>307</sup> There is an aggressive practice of inflated rental pricing in the United States that, if left to its own devices, will self-implode, and the individuals that will suffer the most are the renters. Rent control is an existing solution that can go into effect and stop more and more people from saying, “The Rent is Too Damn High!”<sup>308</sup>

---

303. *See* IND. CODE § 32-31-1-20 (2021).

304. PROSPERITY REPORT, *supra* note 19.

305. Willis, *supra* note 5.

306. Chew, *supra* note 75.

307. Quigley, *supra* note 227.

308. *The Rent is Too Damn High!*, *supra*, note 1.