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Ain't No Taxing High Enough: Using Land Value Taxation to Combat the Nation's Rental Affordability Crisis

Robert Stephen Earnest†

Introduction

Across the United States, cities are losing affordable rental housing[1] at an alarming rate.[2] In some of the nation's fastest-growing areas, rental rates have soared, while rental vacancies have reached a historic low.[3] At the same time, housing prices are rising nearly twice as fast as inflation and wage growth, keeping homeownership out of reach for many renters.[4] As a result, a large and growing number of renters across the country are denied a stable place to live, which research consistently demonstrates is essential for creating safe and healthy communities.[5] However, not all renters are affected equally; the effects of rising rental rates are disproportionately felt by low-income earners.[6] Indeed, a renter

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†. J.D. Candidate, 2021, University of Minnesota Law School. I extend my most sincere gratitude to Professor Ann Burkhart for her advice and guidance throughout the drafting of this Note; to Professor Robert Salvino for introducing me to urban economics, planning, and development; to the members of the *Minnesota Journal of Law and Inequality* for their diligent editing and insightful feedback; to my family for their constant love and support during these past twenty-six years of my life; and to my incredible wife, Rachael, without whom I would not have survived law school.

1. It is widely accepted that for housing to be "affordable," housing costs should not exceed 30% of household income. For an overview of the 30% of income standard, see CHRISTOPHER HERBERT, ALEXANDER HERMANN & DANIEL MCCUE, JOINT CTR. FOR HOUS. STUD. OF HARV. UNIV., MEASURING HOUSING AFFORDABILITY: ASSESSING THE 30 PERCENT OF INCOME STANDARD 2–4 (2018).

2. *See* STEVE GUGGENMOS & KEVIN BURKE, FREDDIE MAC MULTIFAMILY RES. CTR., DIMINISHING AFFORDABILITY – INESCAPABLE: QUANTIFYING THE RELATIONSHIP BETWEEN POPULATION GROWTH AND MULTIFAMILY RENTAL AFFORDABILITY 2 (2019) (finding that nearly 86% of metro areas saw a reduction in affordable housing between 2010 and 2017).

3. *See* JOINT CTR. FOR HOUS. STUD. OF HARV. UNIV., THE STATE OF THE NATION'S HOUSING 2019, at 1–4 (Marcia Fernald ed., 2019) [hereinafter STATE OF THE NATION'S HOUSING 2019].

4. *See id.* at 4.

5. *See, e.g.*, ROBERT WOOD JOHNSON FOUND., WHERE WE LIVE MATTERS FOR OUR HEALTH: THE LINKS BETWEEN HOUSING AND HEALTH 5 (2008) (discussing the relationship between affordable housing and health).

6. Low-income is defined as earning 80% or less of the median income for a given metro area (AMI). *Income Limits*, URB. HOMESTEADING ASSISTANCE BD., https://uhab.org/resource/2020-income-limits/ [perma.cc/THE7-4JBY].

working full-time and earning a minimum wage cannot afford a two-bedroom apartment—let alone a single-family home—in any one of the nation's more than three thousand counties.[7] But low-income earners are not alone in experiencing rental housing affordability issues: middle-income earners[8] are increasingly finding themselves priced out of communities as well.[9]

Not only does rental affordability affect individuals differently based on income, but it also varies across cities, suburbs, small towns, and rural areas. For instance, over the past decade, thriving urban centers like Austin, San Francisco, and Minneapolis-Saint Paul have struggled to add enough affordable units for low- and middle-income renter households to keep pace with demand,[10] while New Orleans lost almost two-hundred such units between September 2018 and August 2019.[11] However, this is not to say that rural areas are unaffected by the affordable rental housing crisis: roughly one quarter of the nation's most rural areas have seen a significant increase in the percentage of residents sending more than half of their income to their landlords.[12]

The number of households and regions affected by rising rental rates, combined with the detrimental impact of high housing prices

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7. NAT'L LOW INCOME HOUS. COAL., OUT OF REACH 2 (2019).

8. Middle-income is understood as earning above 120% of AMI. *Income Limits*, *supra* note 6.

9. JENNY SCHUETZ, COST, CROWDING, OR COMMUTING? HOUSING STRESS ON THE MIDDLE CLASS, BROOKINGS INST. (May 7, 2019), https://www.brookings.edu/research/cost-crowding-or-commuting-housing-stress-on-the-middle-class/ [perma.cc/2LKK-TUES].

10. In Austin, cost-burden rates for low- and middle-income renter households increased from 9% in 2000 to 25% in 2015. CARL HEDMAN, DIANA ELLIOTT, TANAYA SRINI & SHIVA KOORAGAYALA, URB. INST., AUSTIN AND THE STATE OF LOW- AND MIDDLE-INCOME HOUSING 18 (2017). Since 2010, San Francisco has seen a combined 31% decrease in housing for low- and middle-income earners. Ida Mojadad, *Affordable Housing Lags Far Behind High-Income Housing, Report Shows*, SF WEEKLY (Oct. 17, 2019), https://sfweekly.com/news/affordable-housing-jobs-link/ [perma.cc/WD2L-Y8PH]. Furthermore, between 2011 and 2017, the Minneapolis-Saint Paul metro area added only 9,000 new affordable units, which is well below the 52,570 units that were demanded. METRO. COUNCIL, AT A LOSS: AFFORDABLE HOUSING PRODUCTION IN 2017 3 (2019).

11. James Brasuell, *Affordable Housing Losing Ground in New Orleans*, PLANETIZEN (Oct. 1, 2019), https://www.planetizen.com/news/2019/10/106468-affordable-housing-losing-ground-new-orleans [perma.cc/WD45-4APL].

12. Patrick Sisson, *The Rent's 'Too Damn High' in Rural America, Too*, CURBED (Apr. 2, 2019), https://archive.curbed.com/2019/4/2/18291233/rent-apartment-rural-affordable-housing [perma.cc/7XCL-SVZ7].

on homelessness,[13] health outcomes,[14] and income inequality,[15] have sparked a nationwide conversation about the affordable housing crisis and have prompted government intervention. At the federal level, lawmakers have proposed a host of reforms, including modifications to the Low-Income Housing Tax Credit (LIHTC) program[16] and increased investment in the federal Housing Trust Fund.[17] State and municipal governments have also taken action to make housing more affordable. For example, in 2019, the City of Minneapolis amended its zoning ordinance to allow duplexes and triplexes on lots previously zoned exclusively for single-family use.[18] Oregon followed suit by prohibiting single-family zoning in cities with populations of 25,000 or more.[19] Similarly, the City of Dallas created an accessory dwelling unit overlay district making it legal for homeowners to rent out small units built on their property,[20] while San Diego County has taken steps to streamline its building permitting process, thereby increasing the rate at which new rental

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13. KATHLEEN MCCORMICK, LINCOLN INST. OF LAND POL'Y, HOUSING THE HOMELESS 21 (2018) ("The main reason people become homeless today . . . is because they cannot find housing they can afford.").

14. ROBERT WOOD JOHNSON FOUND., *supra* note 5, at 5.

15. *See* Matthew Rognlie, *Deciphering the Fall and Rise in the Net Capital Share: Accumulation or Scarcity?*, BROOKINGS PAPERS ON ECON. ACTIVITY, Spring 2015, at 1, 51 (finding that rising housing costs negatively affect the distribution of income).

16. The LIHTC incentivizes property owners to construct affordable rental units for low- and middle-income tenants by reducing the tax burden on the property subject to the credit. JILL KHADDURI, CARISSA CLIMACO & KIMBERLY BURNETT, U.S. DEP'T OF HOUS. & URB. DEV., WHAT HAPPENS TO LOW-INCOME HOUSING TAX CREDIT PROPERTIES AT YEAR 15 AND BEYOND? 1 (2012). Under current law, the value of LIHTC properties is set at a below-market rate for thirty years. *Id.* at 6–7. However, in some cases, owners can pursue a qualified contract option, which allows them to convert the units to market rate after fifteen years. *Id.* at 7. The Save Affordable Housing Act (SAHA) would repeal the qualified contract option. *See Senators Young and Wyden Introduce Legislation to Protect Affordable Housing*, U.S. SENATOR TODD YOUNG OF INDIANA (June 25, 2019), https://www.young.senate.gov/newsroom/press-releases/senators-young-and-wyden-introduce-legislation-to-protect-affordable-housing [perma.cc/UM8A-L24K] (discussing the SAHA).

17. *See, e.g.*, Diana Budds, *Elizabeth Warren Doubles Down on Affordable Housing Legislation*, CURBED (Dec. 11, 2018), https://archive.curbed.com/2018/12/11/18136027/elizabeth-warren-affordable-housing-bill [perma.cc/6QUN-GNWS] (discussing a bill that would allot an additional $450 billion to the federal Housing Trust Fund, which is used to develop new affordable rental units).

18. MINNEAPOLIS, MINN., CODE § 521.10(1) (2020). For a general discussion of the Minneapolis zoning reform, which was the first of its kind in the nation, see Erick Trickey, *How Minneapolis Freed Itself from the Stranglehold of Single-Family Homes*, POLITICO (July 11, 2019), https://www.politico.com/magazine/story/2019/07/11/housing-crisis-single-family-homes-policy-227265 [perma.cc/3H89-D5EL].

19. OR. REV. STAT. § 197.758 (2019).

20. DALLAS, TEX., CODE § 51A-4.510 (2018).

housing is built.[21] Underlying these reforms is the intuitive principle that more housing means lower housing costs. Ultimately, however, even though these reforms may be necessary to bolster new housing development, they may not be sufficient.[22]

What may be sufficient is a centuries-old tax idea known as land value taxation, which municipal governments have used recently as a means to raise revenue without increasing taxes for homeowners.[23] Land value taxation, briefly, is a tax regime that assesses higher tax rates on land values than on building values. What makes it attractive in the affordable housing context is its ability to incentivize housing development and, thus, lead to higher levels of housing construction.[24] Of course, the goal of this Note is not to suggest that land value taxation is a panacea for our nation's affordable housing woes, but rather to introduce it as a tool worthy of serious consideration. To demonstrate this claim, this Note begins by briefly discussing the recent origins and impacts of the widening gap between supply of—and demand for—affordable rental housing. Part I concludes that one of the main drivers of high housing costs is a shortage of supply and argues that the single-rate property tax system is partly responsible for this supply shortage. Part II posits land value taxation as an alternative to this system. Part III.A argues that land value taxation can augment federal, state, and local efforts to produce more affordable housing. Part III.B addresses how three potentially adverse consequences of enacting a land value tax could be mitigated.

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21. Charles T. Clark, *County Looks to Streamline Permit Process to Bolster Housing*, SAN DIEGO UNION-TRIB. (July 24, 2019), https://www.sandiegouniontribune.com/news/politics/story/2019-07-24/county-to-look-bolstering-housing-by-streamlining-discretionary-permit-process [perma.cc/NCT7-HZRD].

22. For example, recent evidence shows that "upzoning"—the practice of changing a zoning code to allow for taller and/or denser construction—may not be as effective at encouraging development as its proponents argue. *See* Yonah Freemark, *Upzoning Chicago: Impacts of a Zoning Reform on Property Values and Housing Construction*, 56 URB. AFF. REV. 759, 783 (2020) (finding that upzoning had no effect on housing supply).

23. The tax was most recently enacted in Millbourne, Pennsylvania, to striking effect: two of the city's largest parcels, formerly unused, have since come under development, while homeowners have seen their property tax bills slashed by nearly a third. J. Brian Charles, *Leaning on the Land*, GOVERNING (Sept. 2019), https://www.governing.com/topics/finance/gov-land-tax.html [perma.cc/3N5E-XDKY].

24. *See infra* Part II.A; Mason Gaffney, *Tax Reform to Release Land*, *in* LAND-VALUE TAXATION: THE EQUITABLE AND EFFICIENT SOURCE OF PUBLIC FINANCE, 75–76 (Kenneth C. Wenzer ed., 1999) (demonstrating that the single-rate property tax stands as a formidable obstacle to new housing construction).

I. Why Has Rental Housing Become So Unaffordable?

While the current affordable rental housing crisis is one of the worst in recent memory, "[t]he mismatch between the number of people needing homes and the amount of affordable housing available [is not] unique to this moment in history . . . ."[25] In fact, to some degree, the United States rental market has always struggled to supply housing at affordable rates.[26] However, commentators and scholars generally agree that the current affordability crisis began when the subprime mortgage crisis hit in 2007, resulting in nearly three million homeowners losing their homes to foreclosure.[27] These former owner-occupants flocked to an already-crowded rental market, exacerbating the problems caused by a shortage of affordable rental housing.[28] This, in turn, caused the number of cost-burdened renter households—those who spend at least 30 percent of their monthly income on rent—to drastically increase, as former homeowners competed with lower-income renters for affordable units.[29] Indeed, in 2016, nearly half of renters were cost-burdened compared to 20 percent in 1960.[30] While the overall number and percentage of cost-burdened households has marginally decreased since the foreclosure crisis of the late 2000s, homeowners have accounted for much of this reduction.[31] Yet this does not mean that homeownership has become less expensive: overall burden rates have dropped primarily because homeowners have either refinanced into lower-cost mortgages, benefited from income growth, or left homeownership altogether.[32] Moreover, due to today's tighter mortgage underwriting practices,[33] exchanging

25. Bryce Covert, *The Deep, Uniquely American Roots of Our Affordable-Housing Crisis*, THE NATION (May 24, 2018), https://www.thenation.com/article/give-us-shelter/ [perma.cc/6BBZ-7MTM].

26. *See id.* (chronicling the history of affordable housing in the United States).

27. *Id.*; *see also* Gregg Colburn & Ryan Allen, *Rent Burden and the Great Recession in the USA*, 55 URB. STUD. 226, 241 (2018) (finding that "rent burden has unambiguously increased post-recession").

28. Covert, *supra* note 25.

29. *Id.*

30. STATE OF THE NATION'S HOUSING 2019, *supra* note 3, at 31. Moreover, "[t]he share of renter households that were *severely* rent burdened—spending 50 percent or more of monthly income on rent—increased by 42 percent between 2001 and 2015, to 17 percent." PEW CHARITABLE TRUSTS, AMERICAN FAMILIES FACE A GROWING RENT BURDEN 4 (2018) (emphasis added).

31. In 2017, "[t]he number of cost-burdened owners stood at 17.3 million[,]" or 22.5%. STATE OF THE NATION'S HOUSING 2019, *supra* note 3, at 31.

32. *Id.*

33. *Id.* at 3. For example, the Federal Housing Administration, which insures mortgages for riskier borrowers, has adopted a rule that will subject roughly 40,000

monthly rent for a monthly mortgage payment is not an option for a substantial majority of tenants, and thus their housing options largely remain limited to apartment buildings.[34] As a result, "cost-burdened renters now outnumber cost-burdened homeowners by more than 3 million."[35]

At the same time, for a variety of reasons, the United States' large renter population continues to grow larger.[36] Between 2006 and 2016, in roughly a quarter of the nation's one hundred largest cities, the population changed from homeowner- to renter-majority.[37] During the same time, eleven of the largest cities in the United States saw double-digit growth in the number of renters, while seven of those cities saw renter growth exceeding 20 percent.[38] Renter growth has also accelerated in mid-sized cities like Denver, Nashville, and Charlotte, which are among the fastest-growing rental markets in the nation.[39] Unsurprisingly, the increased demand for rental housing has caused rental markets to tighten even further, leading to historically low vacancy rates and

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to 50,000 loans per year to manual review. Under the previous rule, those loans would have been approved automatically. Paul Davidson, *Fewer First-Time Home Buyers Likely to Qualify for Mortgages Under Tougher FHA Standards*, USA TODAY (Mar. 25, 2019), https://www.usatoday.com/story/money/2019/03/25/home-loans-fewer-first-timers-get-mortgages-under-tough-standards/3271050002/ [perma.cc/AF98-6WGL].

34. Manufactured homes—also called mobile homes—have been, and continue to be, a popular, low-cost option for individuals who cannot afford or do not desire to purchase site-built homes. *See* Ann M. Burkhart, *Bringing Manufactured Housing into the Real Estate Finance System*, 37 PEPP. L. REV. 427, 428 (2010) (observing that "[u]p to two-thirds of the new affordable homes built each year have been manufactured"). However, there are currently multiple factors that make manufactured housing a less viable alternative to rental housing. *See id.* at 441–42 (discussing how the legal characterization of manufactured homes as personal property in a majority of states has led to reduced credit availability for manufactured home purchases). *See generally* Daniel R. Mandelker, *Zoning Barriers to Manufactured Housing*, 48 URB. LAW. 233 (2016) (discussing the land use obstacles to manufactured housing construction).

35. STATE OF THE NATION'S HOUSING 2019, *supra* note 3, at 4.

36. *See id.* at 3 ("[E]stimates [of renter households] show[ed] an uptick in early 2019, in keeping with Joint Center projections of about 400,000 net new renter households annually over the coming decade.").

37. Balazs Szekely, *Renters Became the Majority Population in 22 Big US Cities*, RENTCAFE (Jan. 25, 2018), https://www.rentcafe.com/blog/rental-market/market-snapshots/change-renter-vs-owner-population-2006-2016/ [perma.cc/BY69-CR7H].

38. INGRID GOULD ELLEN & BRIAN KARFUNKEL, N.Y.U. FURMAN CTR. & CAPITAL ONE, RENTING IN AMERICA'S LARGEST METROPOLITAN AREAS 12 (2016).

39. Diana Olick, *High Rents Trickle Down to Smaller Cities*, CNBC (Feb. 20, 2015), https://www.cnbc.com/2015/02/19/high-rents-trickle-down-to-smaller-cities.html [perma.cc/5FRH-AGMV].

higher rents.[40] According to the U.S. Census Bureau's Housing Vacancy Survey, the national vacancy rate for rental units in early 2019 was 6.9 percent, the lowest it has been since 1986,[41] while "overall rents [have risen] at . . . twice the pace of overall inflation."[42]

However, unlike previous trends, large cities like Atlanta and Phoenix are generally not the areas experiencing the most drastic rent increases; smaller cities like Madison, Alabama and Maryland Heights, Missouri have seen their rental rates increase by between 6 and 7 percent each year.[43] And even though it tends to be the case that individuals living in cities with higher costs of living tend to have higher incomes,[44] a majority of rental units in United States metro areas continue to remain unaffordable to the average metro renter.[45]

Demand has certainly contributed to growing rental housing unaffordability, as changing household formation, steady job growth, and progressively lower turnover rates combine to drive rental rates upwards.[46] Rising home prices also play an important role by deterring potential homebuyers from entering the housing market.[47] Yet research shows that if this increased demand had been matched by increased housing construction, rental rates would generally be much lower than they currently are.[48] However, even

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40. STATE OF THE NATION'S HOUSING 2019, *supra* note 3, at 27. Rent growth for multifamily apartments in 150 metro areas increased from 2.6% in the first quarter of 2018 to 3.3% in the first quarter of 2019. *Id.* Furthermore, rent growth for single-family units increased from 2.7% in the first quarter of 2018 to 3.2% in January 2019. *Id.*

41. *Id.* at 38. In some places, such as the Minneapolis-Saint Paul metro area, rental vacancy rates are as low as 2 percent. Jim Buchta, *Low Vacancy Rates Make It Tough for Twin Cities Apartment Renters*, STAR TRIB. (Aug. 26, 2019), https://www.startribune.com/low-vacancy-rates-make-it-tough-for-twin-cities-apartment-renters/558031542/ [perma.cc/K8RL-Y3GC].

42. STATE OF THE NATION'S HOUSING 2019, *supra* note 3, at 4.

43. *See* Chris Salviati, *November 2019 Rent Report*, APARTMENT LIST (Oct. 29, 2019), https://www.apartmentlist.com/rentonomics/november-2019-rent-report/ [perma.cc/TU5U-ND4Q] (city data available in table of recent rent estimates).

44. GOULD ELLEN & KARFUNKEL, *supra* note 38, at 15, 18.

45. *Id.* at 18.

46. Olick, *supra* note 39.

47. Laura Kusisto, *More Renters Giving Up on Buying a Home*, WALL ST. J. (Apr. 3, 2018), https://www.wsj.com/articles/more-renters-give-up-on-buying-a-home-1522773685 [perma.cc/L8FE-8SFQ].

48. *See, e.g.*, MAC TAYLOR, CAL. LEGIS. ANALYST'S OFF., CALIFORNIA'S HIGH HOUSING COSTS: CAUSES AND CONSEQUENCES 12 (2015) ("[O]ur analysis suggests that . . . if a county with a home building rate in the bottom fifth of all counties during the 2000s had instead been among the top fifth, its median home prices in

though the stock of new housing has been slowly but steadily increasing,[49] demand has continued to outpace supply in all but three markets across the United States.[50] Thus, the current affordable rental housing crisis is largely a consequence of there simply not being enough units available for the renters who seek them.[51]

Multiple factors help to explain this supply problem. Labor shortages in the residential construction sector, for instance, have both increased the price of labor and prolonged development schedules, making construction more costly and more time-consuming.[52] Hefty development fees also impose onerous burdens on housing production.[53] Indeed, one study found that development fees for multifamily housing complexes in Fremont, California totaled nearly $75,000 per unit.[54] Likewise, land use regulations, such as building codes and zoning ordinances, prevent units from being built in areas where they otherwise would be.[55] When demand

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2010 would have been roughly 25 percent lower."); STATE OF THE NATION'S HOUSING 2019, *supra* note 3, at 12 ("To meet [robust demand for rental units and starter homes], the supply of . . . housing will have to increase significantly.").

49. STATE OF THE NATION'S HOUSING 2019, *supra* note 3, at 1 (observing that "additions to the housing stock have grown at an average annual rate of . . . 10 percent").

50. Julia Falcon, *Apartment Supply Exceeds Demand in Only 3 U.S. Markets*, HOUSINGWIRE (Sept. 23, 2019), https://www.housingwire.com/articles/50205-apartment-supply-exceeds-demand-in-only-3-us-markets/ [perma.cc/TJM2-H6DU].

51. While many, if not most, commentators and advocates agree that housing supply is the greatest barrier to affordability, some do not. *See generally* Vicki Been, Ingrid Gould & Katherine O'Regan, *Supply Skepticism: Housing Supply and Affordability*, 29 HOUS. POL'Y DEBATE 25 (2019) (arguing that more housing will not adequately address affordability challenges); Ron Feldman, *The Affordable Housing Shortage: Considering the Problem, Causes and Solutions* (Fed. Reserve Bank of Minneapolis, Banking & Policy Working Paper No. 02-2, 2002) (concluding that a shortage of income is largely behind the housing affordability problem).

52. STATE OF THE NATION'S HOUSING 2019, *supra* note 3, at 2.

53. *See, e.g.*, Mark Skidmore & Michael Peddle, *Do Development Impact Fees Reduce the Rate of Residential Development?*, 29 GROWTH & CHANGE 383, 392–94 (1998) (finding that development fees in DuPage County, Illinois, reduced the rate of residential construction by 25%).

54. Sarah Mawhorter & David Garcia, *It All Adds Up: The Cost of Housing Development Fees in Seven California Cities*, TERNER CTR. FOR HOUS. INNOVATION (Mar. 3, 2018), https://ternercenter.berkeley.edu/blog/it-all-adds-up-the-cost-of-housing-development-fees-in-seven-california-cities/ [perma.cc/7YJV-XGV9].

55. Building codes regulate the design and construction of buildings, which creates compliance costs and discourages developers from building additional units. David Listokin & David B. Hattis, *Building Codes and Housing*, 8 CITYSCAPE 21, 37 (2005). Zoning ordinances dictate how land in a particular jurisdiction can be used and typically impose limits on building size, height, and bulk, which further constrains rental housing supply. *See* Edward L. Glaeser, Joseph Gyourko & Raven

for housing is strong, the net effect of these obstacles is to raise land and housing prices.[56]

However, this Note posits that another factor is also to blame for rental housing unaffordability: the single-rate property tax. The single-rate property tax is problematic because it is primarily a tax on building values, and because buildings are among the most expensive and durable capital goods that exist, a tax on building values is usually large and long-lasting.[57] Thus, the single-rate property tax stands as a formidable obstacle to new housing construction.[58] Because lack of housing supply is one of the main drivers of our current affordability crisis, a strong case can be made for reforming the single-rate property tax system to one that is more growth-friendly.[59] Land value taxation, by simultaneously rewarding landowners who develop their land and punishing those who do not, represents such a reform. While land value taxation has traditionally been praised for its ability to control the effects of urban sprawl[60] and combat urban blight,[61] its ability to stimulate development—and thus lead to a greater housing stock—indicates that it may be able to reduce the pressures that demand is currently exerting on rental housing prices. Many state and local legislatures have debated enacting a land value tax; a few of them have even

Saks, *Why Is Manhattan So Expensive? Regulation and the Rise in Housing Prices*, 48 J.L. & ECON. 331, 366 (2005) (finding that the substantial gap between the price of housing and construction costs "suggests the power of land use controls in limiting new construction").

56. STATE OF THE NATION'S HOUSING 2019, *supra* note 3, at 8.

57. Gaffney, *supra* note 24, at 75–76.

58. *Id.*

59. While the problems of the single-rate property tax could be solved by outright repealing it, "[t]he loss in revenue . . . would have to be made up with other taxes . . . or with massive cuts in government services." Richard F. Dye & Richard W. England, *The Principles and Promises of Land Value Taxation*, *in* LAND VALUE TAXATION: THEORY, EVIDENCE, AND PRACTICE 4 (Richard F. Dye & Richard W. England eds., 2009) [hereinafter Dye & England, *Principles and Promises*]. Thus, the case for reforming the single-rate property tax is stronger than the case for eliminating it.

60. *See, e.g.*, Seong-Hoon Cho, Seung Gyu Kim & Roland K. Roberts, *Measuring the Effects of a Land Value Tax on Land Development*, 4 APPLIED SPATIAL ANALYSIS & POL'Y 45, 47 (2011) ("A higher tax rate on land than on land improvements . . . is a potential policy tool to moderate sprawl . . . ."); H. Spencer Banzhaf & Nathan Lavery, *Can the Land Tax Help Cure Urban Sprawl? Evidence from Growth Patterns in Pennsylvania*, 67 J. URB. ECON. 169, 177 (2010) (finding that "[a]dopting the split-rate tax results in a 4-5% point increase per decade in the growth of the density of housing units for the first two decades").

61. *See* Elaine S. Povich, *Can Extra Taxes on Vacant Land Cure City Blight?*, PEW (Mar. 7, 2017), https://www.pewtrusts.org/en/research-and-analysis/blogs/stateline/2017/03/07/can-extra-taxes-on-vacant-land-cure-city-blight [perma.cc/87N3-46HG] (discussing a push in Hartford, Connecticut, to assess higher taxes on unused land so as to hasten development and reduce blight).

done so.[62] Nevertheless, most have rejected the idea, usually citing concerns about its effectiveness and impact.[63] However, as this Note argues, a land value tax can be effective at encouraging more housing development and thus reducing net housing costs, and there are ways to mitigate its potentially adverse consequences. Thus, state and local governments should consider using land value taxation in their campaigns to make housing more affordable.[64]

II. Land Value Taxation: History and Description[65]

The land value tax is a type of property tax. The property tax is one of the oldest and most widely-used revenue sources in the United States.[66] For local governments, it is also one of the most important, accounting for roughly half of local tax revenue.[67] Property taxes are assessed for real property and personal property, but because real property is generally much more valuable than personal property, it provides the basis for almost all of the revenue

62. Fairhope, Alabama; Arden, Delaware; and Pittsburgh, Pennsylvania are among the cities that have enacted some variant of the land value tax. Steven C. Bourassa, *The U.S. Experience*, *in* LAND VALUE TAXATION: THEORY, EVIDENCE, AND PRACTICE, *supra* note 59, at 11–12. The City of Amsterdam, New York adopted land value taxation in 1995, but repealed it the following year before its effect could be observed. *Id.* at 12. Oregon, among other states, also briefly experimented with land value taxation during the latter part of the twentieth century. *See generally* Richard W. Lindholm & Roger C. Sturtevant, *American Land Tax Roots: Plus Experimentation in Oregon*, *in* LAND VALUE TAXATION: THE *PROGRESS AND POVERTY* CENTENARY 83–94 (Richard W. Lindholm & Arthur D. Lynn, Jr. eds., 1978) (discussing the land value tax movement in Oregon).

63. *See, e.g.*, Bourassa, *supra* note 62, at 16 (describing how an opponent to Pittsburgh's land value tax argued it "was confusing and was causing residential neighborhoods to lose out at the expense of downtown interests").

64. This Note's discussion of land value taxation is confined to state and local governments because most legal and economic scholars agree that the federal government is constitutionally prohibited from assessing taxes on real property. *See* Richard D. Coe, *The Legal Framework in the United States*, *in* LAND VALUE TAXATION: THEORY, EVIDENCE, AND PRACTICE, *supra* note 59, at 130 (noting that the federal Constitution forbids Congress from laying direct taxes and that real property taxes are generally assumed to be direct taxes within the meaning of the Constitution). *But see* Steven B. Cord, *Legal Suggestions for Enacting a Land Value Tax* 8–14 (Lincoln Inst. of Land Pol'y, Working Paper, 1999) (describing the various ways by which the federal government could constitutionally assess a land value tax).

65. For the purposes of this Note, I make no distinction between land value taxation and split-rate variants of the real property tax that tax land at a much higher rate than improvements.

66. Dye & England, *Principles and Promises*, *supra* note 59, at 3.

67. *See* MYRON ORFIELD, AMERICAN METROPOLITICS 88–89 (2002); *see also* Bethany P. Paquin, *Chronicle of the 161-Year History of State-Imposed Property Tax Limitations* 1 (Lincoln Inst. of Land Pol'y, Working Paper WP15BP1, 2015).

derived from property taxes.[68] For real property, most jurisdictions use a single-rate property tax regime, under which land and improvements to the land, such as buildings, are taxed at the same rate.[69] The operation of a single-rate property tax system can be demonstrated by the following hypothetical. Suppose that a parcel of land is valued at $10,000 and the sole improvement to that land—a restaurant—is valued at $20,000. If the statutory property tax rate is fixed at 5 percent, then the actual amount of property tax owed under a single-rate property tax regime would be $1,500: $500 for the land and $1,000 for the restaurant.[70] Thus, as should be clear from this hypothetical, the single-rate property tax "is actually *two* types of taxes[:] one upon building values, and the other upon land values."[71] Yet despite its reputation as a mainstay of local government finance, the single-rate property tax has long faced fierce public opposition.[72]

While people generally tend to dislike taxes, the single-rate property tax has generated special controversy because it is regressive[73] and can fluctuate widely from year to year.[74] There are also relatively few ways to reduce the amount of property tax owed.[75] The opposition to the property tax has not been confined to

68. JOYCE ERRECART, ED GERRISH & SCOTT DRENKARD, TAX FOUND., STATES MOVING AWAY FROM TAXES ON TANGIBLE PERSONAL PROPERTY 2 (2012). Not only is real property generally more valuable than personal property, it also tends to appreciate in value over time. In contrast, personal property, like cars and boats, tends to lose value as it ages. This is another reason why personal property taxes tend to make up a relatively small percentage of total local property tax revenue.

69. Dye & England, *Principles and Promises*, *supra* note 59, at 4 n.1.

70. This hypothetical assumes a taxable value of 100%. If a state were to instead mandate that a 50% assessment ratio be applied to real property, then the amount of property tax owed in this hypothetical would be $750: $250 for the land and $500 for the restaurant.

71. Alanna Hartzok, *Pennsylvania's Success with Local Property Tax Reform: The Split Rate Tax*, 56 AM. J. ECON. & SOC. 205, 205 (1997) (emphasis added).

72. Ninety-five percent of voters on Debate.org voted in favor of abolishing the single-rate property tax. *Should Property Taxes Be Abolished?*, DEBATE, https://www.debate.org/opinions/should-property-taxes-be-abolished [perma.cc/2YNN-5H6U]. Indeed, the public reaction to the tax has been so hostile that forty-six states have enacted some form of legislation that limits local authority to tax property. *See* Paquin, *supra* note 67, at 3. The most well-known (and most influential) of these limitations is Proposition 13, the 1978 California taxpayer initiative that capped property taxes at 1 percent. *Id.* at 8.

73. It is regressive because low-income individuals spend a greater percentage of their income on housing than high-income individuals and thus are more heavily impacted by real property taxes. CHARLES E. GILLILAND, PROPERTY TAXES: THE GOOD, THE BAD, AND THE UGLY 1 (2013).

74. *Id.*

75. In most states, veterans, the elderly, disabled individuals, and owners of designated residential homesteads can qualify for a partial exemption, but few exemptions beyond those exist. *Id.* at 2.

the public sphere either—economists have long decried the tax as both inefficient and inequitable: inefficient because, by taxing use, it discourages economic development; inequitable because it allows landowners to profit from a resource that derives its value from community rather than individual efforts.[76] It was for these reasons that Henry George, a nineteenth-century activist and political economist, recommended that taxes on buildings be eliminated in favor of a much higher single tax on the value of unimproved land.[77] Theoretically, this tax would have to be high enough to compensate for the decrease in revenue caused by the elimination of the building tax. Thus, in the restaurant hypothetical described above, under the single tax regime envisioned by George, the amount of property tax owed would still be $1,500, but it would be derived solely from the value of the land. This concept, where land value is taxed at a different, higher rate than building value, is known as land value taxation. However, the modern interpretation of land value taxation differs from the traditional single tax version proposed by George, who believed that the single tax should be the *only* tax from which governments would derive their property tax revenues.[78] In

76. *See* Dye & England, *Principles and Promises*, *supra* note 59, at 3–4.

77. *See generally* HENRY GEORGE, PROGRESS AND POVERTY: AN INQUIRY INTO THE CAUSE OF INDUSTRIAL DEPRESSIONS, AND OF INCREASE OF WANT WITH INCREASE OF WEALTH: THE REMEDY (1879), *available at* https://tile.loc.gov/storage-services/service/gdc/gdcscd/00/03/70/63/30/7/00037063307/00037063307.pdf [perma.cc/K2LY-PEP7]. While land value taxation is most famously associated with Henry George, the origins of the theory can be found in the works of classical economists John Stuart Mill and Adam Smith. *See* JOHN STUART MILL, PRINCIPLES OF POLITICAL ECONOMY bk. V (Jonathan Riley ed., Oxford Univ. Press 1994) (1848) ("[T]he existing land-tax . . . ought not to be regarded as a tax, but as a rent-charge in favour of the public; a portion of the rent, reserved from the beginning by the State, which has never belonged to or formed part of the income of the landlords, and should not therefore be counted to them as part of their taxation."); ADAM SMITH, AN INQUIRY INTO THE NATURE AND CAUSES OF THE WEALTH OF NATIONS bk. V (T. Nelson & Sons ed., 1873) (1776) ("Ground-rents, so far as they exceed the ordinary rent of land, are altogether owing to the good government of the sovereign, which . . . enables them to pay so much more than its value for the ground which they build their houses upon . . . Nothing can be more reasonable than that a fund, which owes its existence to the good government of the state, should be taxed peculiarly, or should contribute something more than the greater part of other funds, towards the support of that government.").

78. *See* GEORGE, *supra* note 77, at 371 ("Tax manufacturers, and the effect is to check manufacturing; tax improvements, and the effect is to lessen improvement; tax commerce, and the effect is to prevent exchange; tax capital, and the effect is to drive it away. But the whole value of land may be taken in taxation, and the only effect will be to stimulate industry, to open new opportunities to capital, and to increase the production of wealth."). While there are certain benefits to the single tax, many scholars have not given the idea serious consideration because it is unlikely that a state or local government, in the absence of other taxes, could raise

contrast, the modern interpretation of land value taxation does not require the total elimination of taxes on building values—taxes on building values are merely reduced, while taxes on land values are increased.[79] This approach to land value taxation is known as split-rate taxation and is the one that has been used by nearly all of the jurisdictions that have experimented with land value taxation.[80] Yet because the single tax and the split-rate tax are each variants of the land value tax, they both rest on the same theoretical observations.

Two observations underlie land value tax theory. The first observation is that all taxes, like taxes on income and sales, generally operate to raise prices and discourage both production and consumption.[81] When a government assesses a tax on a good, the cost of producing that good increases by the amount of the tax.[82] Therefore, in order for suppliers to keep consumer purchases at pre-tax levels, the price of the good supplied must fall by the amount of the tax.[83] However, as a matter of theory and practice, this result will not occur because at a lower price, suppliers will see their profits decrease and will be unwilling to supply the good demanded.[84] Thus, because suppliers control the amount of the good they are willing to supply, they will respond to taxes by passing most of the cost of the tax onto consumers.[85] In this way, taxes operate to raise prices. Naturally, if the price of a good increases, some consumers will purchase less of it.[86] Accordingly, suppliers

land taxes high enough to continue funding government services at their present level without violating the Constitution. *See generally* Eric Kades, *Drawing the Line Between Taxes and Takings: The Continuous Burdens Principle, and Its Broader Application*, 97 NW. UNIV. L. REV. 189 (2002) (discussing how taxation may be deemed an unconstitutional taking of private property if it unduly burdens individual property interests).

79. *See generally* Vernon I. Saunders, *In Defense of the Two-Rate Property Tax*, *in* LAND-VALUE TAXATION: THE EQUITABLE AND EFFICIENT SOURCE OF PUBLIC FINANCE, *supra* note 24, at 269–76 (describing the use of land value taxation throughout the twentieth century).

80. For example, all of the cities in Pennsylvania that had enacted a land value tax continued to tax building values, albeit at a significantly lower rate than land values. For a complete list of these cities and the rates imposed, see Dye & England, *Principles and Promises*, *supra* note 59, at 15.

81. Wallace E. Oates & Robert M. Schwab, *The Simple Analytics of Land Value Taxation*, *in* LAND VALUE TAXATION: THEORY, EVIDENCE, AND PRACTICE, *supra* note 59, at 58 [hereinafter Oates & Schwab, *Simple Analytics*]; *see also* GEORGE, *supra* note 77, at 371.

82. *See* Oates & Schwab, *Simple Analytics*, *supra* note 81, at 56.

83. *Id.*

84. *Id.*

85. *Id.*

86. *Id.* at 58.

will respond to lower consumer demand by producing less of the good.[87] Yet because these consumers were willing to purchase the good at its previous price, and because the actual cost of producing the good has not changed, it should be produced and consumed.[88] Thus, taxes generally lead to higher prices and, as a result, lower levels of production and consumption. The same analysis applies to taxes on building values, which have the effect of reducing construction levels and raising rents. This is because buildings are part of a firm's production costs. Thus, unless the economic benefits of improving a parcel of land outweigh the costs associated with an increased tax burden, a landowner will only improve their land until the point where it no longer becomes economically feasible—where they can no longer raise rents high enough to pay the tax—or decide not to build on the land at all, thereby avoiding the tax altogether. Thus, the single-rate property tax—at least in part—keeps the housing stock at less-than optimal levels by creating a disincentive to build.

The second observation is that there are two fundamental differences between land and other objects that render the first observation inapplicable to land. First, whereas producers can respond to high taxes by merely decreasing the amount of the goods they produce, higher taxes cannot diminish the supply of land because land is fixed in quantity.[89] Therefore, although a tax on land value would require landowners to pay more, "it gives them no power to obtain more for the use of their land, as it in no way tends to reduce the supply of land."[90] It is precisely this ability to reduce supply that gives suppliers the power to pass taxes onto consumers in the first place. However, because the supply of land cannot be reduced, landowners cannot pass taxes on their land to tenants. Second, land is immobile; unlike capital, it cannot be relocated to a different jurisdiction to evade tax authorities.[91] Thus, taxes on land

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87. *Id.*

88. Economists use the term "deadweight loss" to describe this loss in economic welfare. *Id.*

89. Although this statement is largely true, it is not *completely* true, as there are a few instances where land has been "created." For instance, "the Back Bay neighborhood in Boston was created by filling the tidewater flats of the Charles River over a 25-year period beginning in 1857." *Id.* at 56 n.4. Likewise, much of the land in the Streeterville neighborhood in Chicago was created through a combination of landfilling and natural accretion. Joseph D. Kearney & Thomas W. Merrill, *Contested Shore: Property Rights in Reclaimed Land and the Battle for Streeterville*, 107 NW. UNIV. L. REV. 1057, 1058 (2015).

90. GEORGE, *supra* note 77, at 373.

91. Arguably, this is true about buildings, too, but whereas buildings can be reduced in size or demolished completely, land cannot.

are unavoidable: every landowner would be required to register their land and pay the tax on their land holdings. Together, these two theoretical observations imply that the single-rate property tax regime unduly burdens housing construction and that a switch to land value taxation would free up more land for development and put land to its best and highest possible use without harming renters.

III. Using Land Value Taxation to Increase Affordability

A. How Land Value Taxation Can Create More Affordable Rental Housing

Conventional property taxes discourage landowners from improving their land by causing their taxes to rise.[92] Because land value taxation shifts most or all of the tax on improvements onto land, landowners would be able to add more value to their land without any or with insignificant tax increases, which reduces the average tax rate on their property.[93] In cities where demand is strong, among the main reasons for the lack of affordable rental housing is that there are not enough rental units available to accommodate demand, not enough moderately-priced homes into which renters can move, or some combination of the two.[94] Thus, switching to a land value tax system could help to spur development in high-demand areas so as to increase the available rental housing stock.

The incentive effects of land value taxation can be demonstrated by the following hypothetical. Suppose that there are two residential properties, each in a different part of the city. One is a small, single-family house built on a large lot and located in a high-valued neighborhood near the city's central business district; the other is a much larger multifamily rental housing unit built in a neighborhood much further away from the city's core where properties are assessed at lower values. Suppose also that the land and building values of the single-family house are each $200,000, while the multifamily unit has land valued at $50,000 and improvements valued at $350,000. Under a single-rate property tax

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92. *See* discussion *supra* notes 81–88 and accompanying text; *see also* Arthur P. Becker, *Principles of Taxing Land and Buildings for Economic Development*, *in* LAND AND BUILDING TAXES 12 (1969).

93. *Id.* at 25; *see also* TAYLOR, *supra* note 48, at 13 ("Building more units on the same plot of land allows a developer to spread land costs across more units, lessening the impact of land costs on the cost of each unit. This is because land costs are fixed and do not increase if a developer builds additional units.").

94. STATE OF THE NATION'S HOUSING 2019, *supra* note 3, at 11, 27.

regime, both parties pay the same amount of tax, as both have a total assessed value of $400,000. However, under a land value tax regime, where the tax on building values is eliminated or significantly reduced, that would no longer be the case. The tax burdens of the two properties would not be equally shared. This is because to receive a similar amount of tax revenue, the city would have to increase the tax rate on land values to make up for the reduced tax on building values.[95] Thus, the multifamily unit property would end up paying a lower share of total collections, while the underused land in the higher-valued neighborhood would see its tax share increase.

Not only does this result seem intuitively more fair, as lands—in contrast to building values—are created by community efforts, not individual ones, it also provides an economic incentive for owners of higher-valued but vacant or underused land to develop that land beyond its present use.[96] It incentivizes development of underused land by means of both *stick* (the tax on land value) and *carrot* (the absence of tax on building values), rewarding both the construction of new buildings and the renovation of old ones. Vacant lots acquire new buildings, as owners either ramp up development to meet a higher tax burden or sell to someone else who will improve it. In the United States, on average, 17 percent of large cities' land area is considered to be vacant or underdeveloped,[97] and many of these cities have the highest rents and lowest vacancy rates.[98] The incentive effects of land value taxation would likely be most powerful in these cities because land values tend to be the highest in urban areas.[99] Thus, in the hypothetical described above, because the tax on land values would increase under a land value tax regime, the owner of the single-family property would have much

95. However, even if the city did not raise rates high enough to receive the same amount in revenue, the land tax on the single-family property would still be much higher than the land on the multifamily property, simply because the former is more valuable than the latter.

96. Harold S. Buttenheim, *Unwise Taxation as a Burden on Housing*, 48 YALE L.J. 240, 245 (1938).

97. Galen D. Newman, Ann O'M. Bowman, Ryan Jung Lee & Boah Kim, *A Current Inventory of Vacant Urban Land in America*, 21 J. URB. DESIGN 302, 311 (2016).

98. A study conducted by PropertyShark and Yardi Matrix found that Dallas, Las Vegas, Austin, San Antonio, Phoenix, Minneapolis, and Atlanta were among the top ten cities in terms of the total vacant land area in their commercial business districts. To view the results of this study, visit https://www.commercialcafe.com/blog/study-development-vacant-land-major-us-cbd/ [perma.cc/7Y87-8796].

99. Buttenheim, *supra* note 96, at 241 (observing that "[w]here population concentrates, the demand for land is greater than for equally advantageous sites where population is sparse").

more of an incentive to redevelop the home as a duplex or other multiple-family property, which would add more units to the city's rental housing stock.[100]

Land value taxation not only provides a powerful economic incentive for landlords to build more housing; by reducing or removing building taxes, it encourages greater intensity of land use, and so is more favorable to apartment construction than homebuilding.[101] In contrast, single-rate property taxation tends to favor larger parcels and thus discourages vertical construction.[102] This is because tall buildings are more costly to construct than short buildings, which makes them more valuable for assessment purposes.[103] As developers build skywards, they encounter increasing capital costs resulting in part from higher taxes.[104] Conversely, "horizontal spread enjoys decreasing capital costs . . . and saves on capital by consuming more land."[105] This forced demand for land in part explains the "sprawling" nature of so many American cities.[106] Accordingly, assessing a higher tax rate on land values and reducing the rate on building values would cause developers to substitute capital for land and thus would very likely lead to more construction of rental housing.

Because of its depressing effects on land price, a switch to a land value tax regime would also help to curb speculation in land markets. Land speculation occurs when individuals buy or sell land with the expectation of profiting from the transaction.[107] Land speculation not only raises land prices, but also removes land from the market that could otherwise have been put to productive use.[108]

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100. *Id.*

101. Gaffney, *supra* note 24, at 89.

102. *Id.*

103. Construction of tall buildings is generally more expensive than construction of short buildings "because of their need for sophisticated foundations, structural systems to carry high wind loads, and high-tech mechanical, electrical, elevator, and fire-resistant systems." Mir M. Ali & Kheir Al-Kodmany, *Tall Buildings and Urban Habitat in the 21st Century: A Global Perspective*, 2 BUILDINGS 384, 386 (2012).

104. Gaffney, *supra* note 24, at 76.

105. *Id.*

106. *Id.* (observing that "[i]n time[, building taxes] also lead[] to urban expansion"). Another one of the main contributors to urban sprawl has been and continues to be single-family zoning because of its general prohibition on vertical development. *See id.*; *see also* Trickey, *supra* note 18.

107. *Speculation*, BLACK'S LAW DICTIONARY (11th ed. 2019).

108. Speculation in land was one of the main drivers of the U.S. housing price boom between 2000 and 2006. Charles G. Nathanson & Eric Zwick, *Arrested Development: Theory and Evidence of Supply Speculation in the Housing Market*, 73 J. FIN. 2587, 2623 (2018). For example, in Las Vegas, which has a relatively large

The single-rate property tax system, by keeping landholding costs relatively low, makes it economically feasible for speculators to buy up land and await a rise in its value without making any improvements. Under a land value tax regime, however, speculation would be less possible. This is because shifting a larger tax burden onto land would have the effect of *lowering* land prices by making land less attractive as an investment vehicle—more owners would sell land not to make a profit but to relieve themselves of a tax liability. Therefore, because the *use* (as opposed to the ownership) of land would primarily have economic value, the costs to many owners of holding land in speculation would simply become too onerous to justify continued ownership or nondevelopment.[109] In addition to its arresting effects on construction, the single-rate property tax system makes rental housing less affordable because it allows landlords to shift their taxes onto their tenants, resulting in higher rents.[110]

However, under a land value tax regime, this shifting would not occur because the land is fixed in supply.[111] Landlords could not raise the price of their land in response to a higher land tax because at a higher price, less land would be demanded, which would result in an excess supply of land and downward pressure on the cost of land. Thus, a higher tax on land values is "borne entirely by landowners" and therefore would not raise rents.[112] On the contrary, higher land taxes would lead to lower land prices, which would cause rents to fall and thus would further aid in making rental housing more affordable.[113]

Underlying the previous analysis are two assumptions about landlord behavior: that land value taxation will effect the timing of

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supply of undeveloped land, speculation in the land markets caused land prices to quadruple between 2000 and 2006, rising from $150,000 per acre to roughly $700,000 per acre. *Id.* at 2590.

109. Harry G. Brown, *Land Speculation and Land-Value Taxation*, *in* LAND-VALUE TAXATION: THE EQUITABLE AND EFFICIENT SOURCE OF PUBLIC FINANCE, *supra* note 24, at 46, 56 ("[L]and-value taxation, resting equally on land whether used or unused, must discourage [land speculation]").

110. WALTER A. MORTON, HOUSING TAXATION 100 (1955) (finding that while building taxes on owner-occupied property must be paid by the owner, "[w]here . . . the property is occupied by a tenant, he may pay all or any part of a higher house tax through higher rents"). However, in some states, like Minnesota, certain tenants are able to claim a refund for all or at least a part of this amount. *See* MINN. DEP'T OF REVENUE, PROPERTY TAX AS A PERCENTAGE OF RESIDENTIAL RENT 1 (2005) (describing Minnesota's Property Tax Refund Program).

111. *See* discussion *supra* notes 89–90 and accompanying text.

112. Oates & Schwab, *Simple Analytics*, *supra* note 81, at 57.

113. *See id.*

landlords' decisions to develop and that they will respond by building residential, as opposed to mainly commercial, structures.

i. More Landowners Will Improve Their Land

The first assumption is that land value taxation will affect the timing of development, meaning that landlords will actually respond to the tax by improving their land. While some commentators are skeptical that this would be the case,[114] empirical evidence from Australia and the United States, while very limited, does show that greater construction activity tends to follow when higher land taxes are assessed. For example, in Australia, from 1921 to 1923, while only 7 percent of the municipalities in the state of Victoria levied a tax only on land values, they were responsible for nearly half of all new housing construction in that state,[115] a finding which is made all the more significant by the fact that only 16 percent of the state's population lived in those areas.[116] Likewise, from 1921 to 1940, in South Australia, housing construction was consistently more remarkable in the areas that used land value taxation than in the areas that taxed land and building values at equal rates.[117] In general, across Australia, the states with a higher number of municipalities using land value taxation generally had higher residential building activity levels. In contrast, Tasmania, where land value taxation was not practiced at all, had the lowest.[118] While additional factors, such as population growth, help to explain these trends, the relationship between land value taxation and building activity is significant and consistent enough to suggest that the former was a central influence on the latter.

In comparison with Australia, the adoption of land value taxation in the United States has been less widespread—almost all of the experience with it has been in Pennsylvania and Hawaii—and thus, the data on its effects are even more limited.[119] Nonetheless, the evidence indicates that the tax's enactment in

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114. *See id.* at 71.

115. Saunders, *supra* note 79, at 272. Moreover, "[f]rom 1954 to 1958, the 19 percent of municipalities that used [land value taxation] accounted for 62 percent of new home construction" while the five municipalities that switched to land value taxation in 1958 saw a 34 percent greater increase in construction over the next four years than the nearby areas that continued to tax building values. *Id.*

116. E.J. Craigie, *Australia*, *in* LAND VALUE TAXATION AROUND THE WORLD 22 (Harry G. Brown ed., 1955).

117. *Id.*

118. *Id.*

119. Bourassa, *supra* note 62, at 11. Even though other states and cities have experimented with land value taxation at varying points throughout time, little to no data for them exists.

those jurisdictions was generally followed by higher levels of development. The most famous example of the land value tax in the United States is the one adopted in 1913 by the City of Pittsburgh, which was required by Pennsylvania law to assess a lower tax rate on building values than on land values.[120] After expanding its tax on land values in 1979 to about five times the one on building values, the City saw a 70 percent increase in annual building permit values in the decade following the expansion.[121] In contrast, permit values in thirteen other major Rust Belt cities that did not assess a land value tax (including Cincinnati, Detroit, and Buffalo) dropped significantly during the same time period.[122] Likewise, Oil City, Pennsylvania saw a 58 percent increase in new construction activity in the first three years after it adopted a land value tax compared to the three years preceding the adoption.[123] Harrisburg, once considered the most economically distressed city in the United States, also benefited greatly from land value taxation: its total number of vacant buildings decreased from over four thousand in 1982 to five hundred in 1994.[124] Stephen Reed, the mayor of Harrisburg at the time, directly attributed its success to the City's adoption of the land value tax.[125] However, one of the primary reasons for why these cities responded so favorably is because there was high demand for improvements. In a few other Pennsylvania cities, like Clairton, land value taxation failed to bring about new development because the demand was simply absent.[126] Without

120. Specifically, the law required all "second-class cities," of which Pittsburgh was one, to provide "for gradual increases in the land tax rate and gradual reductions in the improvement tax rate over a period of 12 years." *Id.* at 12.

121. Hartzok, *supra* note 71, at 208. Despite this documented success, support for the tax began to wane after a property assessment in Allegheny County in 2001 led to significant increases in land values and tax bills for resident taxpayers. Bourassa, *supra* note 62, at 16. Even though these increases resulted from infrequent and inaccurate assessments and substandard rate-setting procedures, it was the tax that came under fire. *Id.* The nail in the coffin for Pittsburgh's experimentation with land value taxation came when Mayor Tom Murphy, who initially supported the tax and was being challenged in the upcoming mayoral election, revised his position after it became a high-profile political issue. *Id.* Nonetheless, despite the abolition of the land value tax as a source of general revenue in Pittsburgh, the City still uses a land-based tax to finance the Downtown Pittsburgh Business Improvement District. *Id.*

122. Wallace E. Oates & Robert M. Schwab, *The Impact of Urban Land Taxation: The Pittsburgh Experience*, 50 NAT'L TAX J. 1, 9 (1997) [hereinafter Oates & Schwab, *Impact of Urban Land Taxation*].

123. Saunders, *supra* note 79, at 272.

124. Hartzok, *supra* note 71, at 209–10.

125. *Id.* at 210 (quoting Mayor Reed, who stated that "[t]he two-rate system has been and continues to be one of the key local policies that has been factored into this initial economic success").

126. Bourassa, *supra* note 62, at 23.

demand to exert pressure on land values, taxes generally remained low and thus gave landowners no real incentive to build or sell to someone who would.[127]

Outside of Pennsylvania, the other major U.S. experience with land value taxation occurred in 1963 when Hawaii adopted the tax statewide.[128] Following the enactment, the State saw a boom in building activity similar to the ones that occurred in Pittsburgh, Oil City, and Harrisburg.[129] However, because the tax was primarily adopted as part of a larger effort to promote tourism, this boom was mostly in hotel building, not residential construction.[130] Ultimately, local backlash against the new, taller construction and its rapid, urban transformation of Hawaii's Waikiki Beach led the state legislature to rescind the law that created the tax,[131] even though poor zoning and planning decisions were arguably more responsible for the character change than land value taxation per se.[132] Yet, in many ways, this backlash was a testament to land value taxation's *success* at encouraging development, not its failure.

ii. More Residential Structures Will Be Built

The other assumption underlying this analysis is that owners of vacant or underdeveloped land would generally respond to higher land taxes by building more residential structures than commercial structures. Of course, this does not necessarily have to be the case. Unlike zoning ordinances and building codes, real estate taxes cannot require or prohibit specific land uses, but can only provide economic incentives. Indeed, the Pittsburgh construction boom was largely in commercial building activity; there was only a slight increase in residential construction.[133] Likewise, as was previously mentioned, most of the new development in Hawaii came from the hotel building sector.[134]

127. *Cf.* Oates & Schwab, *Simple Analytics*, *supra* note 81, at 56 (supplying the economic analysis).

128. Bourassa*, supra* note 62, at 14.

129. *Id.* at 17.

130. *Id.*

131. *Id.* at 17–20. In fact, singer/songwriter Joni Mitchell reportedly wrote her famous lyric "they paved paradise and put up a parking lot" while visiting Waikiki in 1972. *Id.* at 17.

132. RICHARD F. DYE & RICHARD W. ENGLAND, LINCOLN INST. OF LAND POL'Y, ASSESSING THE THEORY AND PRACTICE OF LAND VALUE TAXATION 14 (2010).

133. Oates & Schwab, *Impact of Urban Land Taxation*, *supra* note 122, at 8–9. However, at the time, the national housing market was in a building slump, so even a slight increase in residential construction is worth noting. *Id.*

134. Bourassa, *supra* note 62, at 17.

Yet there are three reasons why it is safe to make this assumption. One reason is that most, if not all, of the jurisdictions discussed in this section adopted or used land value taxation with a specific goal in mind—either to promote tourism, revitalize a downtown business district, or spur economic development generally—and, in almost every case, the tax successfully achieved that goal.[135] Thus, if a government adopted land value taxation intending to increase rental housing production, it stands to reason that it could achieve that goal by assessing the tax in a way that favors dense residential building.[136] A second reason is that rental units are income-producing properties and so would naturally be attractive development options for landowners seeking to offset their increased tax burdens. The third reason is that municipal zoning ordinances often prohibit commercial building in residential zones, so owners of vacant or underdeveloped lots zoned for residential use would be compelled to construct residential structures. Some of these structures would undoubtedly be multifamily units.[137] In sum, it seems likely that cities would see an increase in the number of rental units by switching to a land value tax regime, which would reduce the pressures of demand on supply and thus lead to more affordable housing for low- and middle-income renters.

B. Consequences of Adopting Land Value Taxation and How to Mitigate Them

While land value taxation can be used to positively impact the lives of renters nationwide, there are three groups that the tax may negatively impact: homeowners, manufactured home residents, and independent ("family") farmers. These groups stand to be harmed because they either own large tracts of underdeveloped land, as is usually the case with homeowners and independent farmers, or rent the land upon which they live from landlords who would be incentivized under a land value tax regime to convert the land to a different use, as is usually the case with manufactured home

135. *See generally id.* at 11–25 (comparing land value taxes in Pennsylvania and Hawaii).

136. For example, landowners could have their land tax rates reduced so long as they developed and operated a multifamily housing complex on the parcel burdened by the tax. However, should the complex be demolished or converted to a use other than multifamily, the rate would be adjusted back to its original level. In this way, the land value tax would encourage development of land generally, but housing development specifically.

137. Of course, this could not happen on lots zoned for single-family use, which indicates why zoning reform is necessary to create more affordable housing.

residents. The impacts on these groups, to the extent that they will occur at all under a land value tax system, can and should be mitigated or, if possible, avoided altogether.

i. Homeowners

Because land value taxation incentivizes greater intensity of land use, it naturally favors multifamily housing over single-family housing and thus benefits renters rather than homeowners.[138] However, even though homeowners, on average, tend to be wealthier than renters and are thus less likely to face affordability challenges,[139] it remains the case that many homeowners are cost-burdened.[140] Insofar as the purpose of enacting a land value tax is to create more affordable housing generally, it would be counterproductive for housing to become *less* affordable as a result of adopting the tax. Nonetheless, a switch to a land value tax regime would likely not unduly burden homeowners for two reasons. First, land taxes increase with land values, and single-family properties are typically—although not always—located in less urban, lower-value areas.[141] Therefore, single-family properties would likely face lower land taxes than buildings located in more urban, higher-value areas. Second, because higher taxes on land values would be accompanied by lower taxes on building values, most single-family homeowners would likely see their actual property tax payment either decrease, remain the same, or increase by a negligible amount.[142] Thus, land value taxation, while certainly more

138. *See* discussion *supra* notes 101–106 and accompanying text.

139. In 2016, the median net worth of a homeowner was $231,400, whereas the median net worth of a renter or non-homeowner was $5,200. Jesse Bricker, Lisa J. Dettling, Alice Henriques, Joanne W. Hsu, Lindsay Jacobs, Kevin B. Moore, Sarah Pack, John Sabelhaus, Jeffrey Thompson & Richard A. Windle, *Changes in U.S. Family Finances from 2013 to 2016: Evidence from the Survey of Consumer Finances*, 103 FED. RES. BULL. 1, 13 (2017).

140. STATE OF THE NATION'S HOUSING 2019, *supra* note 3, at 31.

141. *See* Emily Badger & Quoctrung Bui, *Cities Start to Question an American Ideal: A House With a Yard on Every Lot*, N.Y. TIMES: UPSHOT (June 18, 2019), https://www.nytimes.com/interactive/2019/06/18/upshot/cities-across-america-question-single-family-zoning.html [perma.cc/2EVH-N6C7] (discussing how, compared to urban communities, in suburban communities "a higher share of land is devoted to housing, and a higher share of that housing is required to be single-family"). This is because land is usually cheaper at the edge of every city, and so that is where people tend to own homes. *See* R. Pendall, *Do Land-Use Controls Cause Sprawl?*, 26 ENV'T & PLAN. B 555, 556 (1999) (discussing land value in suburban areas and observing the general principle that "more sprawl occurs where land values are lower").

142. Ultimately, however, the actual amount of property tax paid by homeowners under a land value tax regime will depend on their land intensity, which is the land

favorable to apartment-building, does not necessarily make homeowning more costly.

However, while it is unlikely that very many homeowners will be negatively affected by a switch to land value taxation, one group of homeowners deserves special consideration: those who are asset-rich but cash-poor.[143] These individuals tend to be those who purchased a home long ago for a low price and saw that home's value greatly appreciate over the following years.[144] Still, their wages failed to appreciate at the same rate, leaving them with considerable housing wealth but little to no liquid assets.[145] Even though these types of homeowners are arguably not presently cost-burdened, they may become cost-burdened under a land value tax system if the increase to their property tax payment is more than they are presently able to pay.[146] One way to avoid this issue is to grandfather these individuals into their previous property tax payments until death or the property is sold.[147] Another way is to introduce land value taxation with a lower split rate that gradually increases over a period of time.[148] Lastly, just like how many jurisdictions allow veterans, senior citizens, and disabled individuals to defer all or part of their property tax payments,[149] a deferral category could be created for those who are unable to pay their property tax because of undue burden.[150] Thus, while land value taxation does have the potential to harm these types of homeowners, this harm is not inevitable and can be mitigated or eliminated.

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value divided by the total value (land value plus building value). What this generally means is that less intensely developed parcels are more likely to see a tax increase, while the opposite is true for more intensely developed lots. For a study of how different classes of homeowners would be impacted under a land value tax regime, *see* DYE & ENGLAND, LINCOLN INST. OF LAND POL'Y, *supra* note 132, at 28–30.

143. PETER HULSEMAN, ADAM ROVANG, DEVIN BALES & HOANG THE NGUYEN, NW. ECON. RES. CTR., LAND VALUE TAX ANALYSIS: SIMULATING THE TAX IN MULTNOMAH COUNTY 28 (2019).

144. *Id.*

145. *Id.*

146. *Id.*

147. *Id.* at 28–29.

148. *Id.* at 29. For example, instead of assessing a 70/30 or 90/10 land-to-building value ratio, the first year of implementation could begin with a 55/45 or 60/40 land-to-building value ratio. This rate would then slowly increase over the following years, which would ease the harshness of the impact on these types of homeowners.

149. *See* GILLILAND, *supra* note 73, at 2.

150. HULSEMAN ET AL., *supra* note 143, at 29.

ii. Manufactured Home Residents

Manufactured home residents may either be burdened or benefited under a land value tax system depending on whether their home is assessed as real or personal property. While states generally differ in how they classify manufactured homes,[151] most states treat manufactured homes as personal property for assessment purposes unless the resident owns the land on which the home is situated.[152] Because the vast majority of manufactured home residents own the land upon which their home is located,[153] they likely pay both building and land taxes, and thus would be affected by a land value tax system in the same way that owners of site-built homes would be affected.[154] In contrast, roughly one-fourth of manufactured home residents do not own the land on which their home is situated,[155] so a land value tax system would largely affect them in the same way that it would affect renters generally.[156] However, an essential difference between multifamily housing and manufactured housing is that multifamily housing is a relatively intensive land use, while manufactured housing is not. For manufactured home residents who rent rather than own their land, this distinction makes little difference as far as rental rates are concerned, because landlords cannot pass higher land taxes onto their tenants.[157] Still, the distinction does make a difference in a

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151. Burkhart, *supra* note 34, at 442–45.

152. *See, e.g.*, FLA. STAT. § 320.015 (2020) ("A mobile home is to be considered real property only when the owner of the mobile home is also the owner of the land on which the mobile home is situated and said mobile home is permanently affixed thereto."); WIS. DEP'T OF REVENUE, PROPERTY TAX GUIDE FOR MANUFACTURED AND MOBILE HOME OWNERS 6 (2020) (stating that a manufactured home can only be considered personal property if it is situated on land owned by someone other than the homeowner). *But see* IDAHO CODE § 63-303 (2016) ("Manufactured homes shall be assessed as other residential housing . . . .").

153. *See* Julia O. Beamish, Rosemary C. Goss, Jorge H. Atiles & Youngjoo Kim, *Not a Trailer Anymore: Perceptions of Manufactured Housing*, 12 HOUS. POL'Y DEBATE 373, 381 (2001) (finding that 93% of double-section and 73% of single-section manufactured home residents owned the land on which their home was located). One reason for why this finding may be surprising is that manufactured home residents have long been thought of as predominantly low-income when they actually encompass a range of income groups. *See* Burkhart, *supra* note 34, at 435 (describing the misperceptions about manufactured home residents).

154. *See* discussion *supra* note 142 and accompanying text (observing single-family homeowners would likely see their actual property tax payment either decrease, remain the same, or increase by a negligible amount).

155. Beamish et al., *supra* note 153, at 381.

156. *See* discussion *supra* notes 110–111 and accompanying text (noting under a land value regime, landlords will be less likely to shift their taxes onto their tenants through charging higher rents).

157. *See supra* text accompanying notes 111–113; Oates & Schwab, *Simple Analytics*, *supra* note 81, at 57.

landlord's decision about whether to let their land continue in its current use or redevelop it for a more intensive use. What this means is that, under a land value tax regime, a landlord is more likely to redevelop their land when a manufactured home resident is renting it than when it is already being used to provide site-built multifamily rental housing. However, governments can avoid this undesirable outcome by completely exempting land that is being rented for manufactured home use from the increased land tax. Exempting land should not be problematic because manufactured homes located on leased land are typically assessed as personal property and thus are not charged a building tax. Therefore, governments would not lose revenue by exempting these types of homes from the higher land tax; they would simply not gain more revenue.

iii. Independent Farmers

Because land value taxation disfavors low-density development,[158] independent farmers stand to be hit the hardest by a land value tax system, as farms typically encompass many acres of unimproved land. Yet "[f]arms provide value without full development"[159] and so even though it is the intention of land value taxation to encourage landowners to free up unused or underused land for development, it would generally be unwise to create a system that makes farm operation impossible, inefficient, or at the very least, highly difficult.[160] Therefore, in order to avoid the hardship that farmers could theoretically face under a land value tax system, farms could be excluded from the system entirely and instead taxed at whatever rate was assessed under the previous system.[161] Alternatively, farms could be "given a current use

158. *See* discussion *supra* notes 101–106 and accompanying text.

159. HULSEMAN ET AL., *supra* note 143, at 28.

160. *But see* Alanna Hartzok, *Pennsylvania Farmers and the Split-Rate Tax, in* LAND-VALUE TAXATION: THE EQUITABLE AND EFFICIENT SOURCE OF PUBLIC FINANCE, *supra* note 24, at 264 (arguing that "farm owners with larger amounts of land value pay disproportionately less in taxes [under a single-rate property tax regime] than those with less valuable holdings" and that "[o]vertaxing buildings and undertaxing land favor large farming operations that are not necessarily the most efficient.").

161. HULSEMAN ET AL., *supra* note 143, at 28. It is worth noting here that the net worth of farm households tends to be much higher on average than that of non-farm households. *See* ASHOK K. MISHRA, HISHAM S. EL-OSTA, MITCHELL J. MOREHART, JAMES D. JOHNSON & JEFFREY W. HOPKINS, U.S. DEP'T OF AGRIC., INCOME, WEALTH, AND THE ECONOMIC WELL-BEING OF FARM HOUSEHOLDS 14 (2002) (finding that the total net worth of an average farm household in 1999 was $563,562). Thus, whether most farmers would actually become cost-burdened under a land value tax regime is debatable.

exemption that allows them to continue to operate without undue tax burden."[162] Ultimately, however, because farms tend to be located in rural areas where land is not highly valued, there is reason to believe that many farms, and specifically those with proportionately higher building-to-land ratios, would not be drastically affected by a land value tax—or even affected at all.[163]

Conclusion

As America's affordable housing crisis has worsened, local governments have begun to look inwards and reform some of the very laws and policies responsible for leading us here.[164] Yet the single-rate property tax regime, which has contributed significantly to that crisis by restricting rental housing supplies, has so far gone undetected and thus has managed to avoid the same fate as single-family zoning.[165] Both theory and empirical evidence suggest that land value taxation is an effective tool for freeing up land for development and creating more units for the renters who seek them. Thus, switching to a land value taxation is the next step that local governments should take to combat the nation's growing affordable rental housing crisis.

162. HULSEMAN ET AL., *supra* note 143, at 28.
163. Hartzok, *supra* note 160, at 265.
164. *See* discussion *supra* notes 16–22 and accompanying text.
165. *See, e.g.*, Trickey, *supra* note 18.