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The 21st Century ROAD To Housing Act: A Triple Threat To The Constitution

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Executive Summary

This white paper focuses on the constitutional implications of two provisions of the proposed 21st Century ROAD to Housing Act that seek to regulate the purchase and sale of single-family homes by so-called “large institutional investors”—that is, corporate entities that own more than 350 single-family homes. In one provision, the Act generally bans such entities from purchasing additional single-family homes after the law takes effect. Although there are exceptions to this ban, certain categories of excepted purchases trigger a forced-sale obligation under the second provision discussed here. Specifically, if a large institutional investor purchases new-construction property, property constructed under either a build-to-rent or renovate-to-rent program, or property constructed as part of a planned 55-and-older community that is ultimately not brought to fruition, the owner must sell the property after seven years. As this white paper explains, those two provisions in the Act—the purchase prohibition and the forced-sale provision—are not just novel but affirmatively unconstitutional. Indeed, they are triply suspect under the Constitution.

The forced-sale provision runs afoul of the Takings Clause of the Constitution. Under the Takings Clause, the government is permitted to appropriate private property for a public use but only if it pays just compensation to the property owner. The forced-sale provision suffers two defects under the Takings Clause. First, it effects takings while providing no mechanism for compensation. When the government forcibly dispossesses a property owner of his land, it has appropriated property, which qualifies as a taking that triggers the Takings Clause’s protections. The forced sales under the Act thus are takings. And by their very nature, they do not provide just compensation. Distressed sales typically result in significant price discounts, which means that large institutional investors will not obtain fair-market prices as part of the forced sales, and the proposed law furnishes no mechanism to make up the shortfall. Second, the forced sales fail the threshold requirement that takings be only for public uses without regard to the amount of compensation afforded. Since the Founding, courts have recognized that the Takings Clause forbids the government from taking private property from one private party merely for the purpose of giving or transferring it to another private party. That describes the forced-sale provision to a T. The bill itself explicitly states that the entire purpose of the restrictions on large institutional investors is to ensure that there is a supply of single-family homes for private individual homebuyers. While proponents of the legislation may believe this redistribution serves broader policy goals, that does not suffice under the Takings Clause, which imposes a just-compensation requirement on the government’s eminent domain authority, but does not permit depriving a property owner of its ownership interest simply to award it to another party deemed more deserving.

Apart from its Takings Clause difficulties, the Act raises serious concerns under the equal-protection component of the Fifth Amendment’s Due Process Clause. While the federal government generally enjoys substantial flexibility in drawing classifications in economic legislation, that is less true when it comes to fundamental rights, such as owning and disposing of property. Here, by imposing special burdens on a specific subset of corporate property

owners (and them alone) when it comes to something as fundamental as the ownership and disposition of private property, the federal government has impermissibly discriminated against such investors and pursued an illegitimate policy goal. The Fifth Amendment does not permit the federal government to discriminate in such matters, let alone pursue discrimination for the sole purpose of giving benefits to preferred parties.

Finally, the government's regulation of local real-estate purchases upsets the traditional federal-state balance and violates federalism principles. Land use is an area of law uniquely within the purview of states and localities, and it is well-established that the federal government cannot directly control or superintend local planning matters. Indeed, nearly a century ago, courts rejected the initial congressional effort to grant the executive branch authority to engage in housing development precisely because it exceeded the federal government's limited, enumerated powers. Ever since, the federal government has maintained a decentralized approach to housing policy that involves the cooperation of state governments. The Act is a marked departure from that historical practice and amounts to an attempt by the federal government to superintend truly local affairs.

In short, the Act's purchase prohibition and forced-sale provision are a triple threat to the existing constitutional order. The Act takes private property without providing just compensation or furthering an adequate public purpose; it discriminates as to fundamental incidents of property ownership; and it upends the traditional federal-state balance and intrudes deeply into an area of traditional state and local control. The prudent course is for Congress to excise those provisions from the Act before a court is forced to declare them unconstitutional.

Background

Federal involvement in the housing market has its roots in 1930s New Deal legislation. See Lawrence M. Friedman, *Public Housing and the Poor: An Overview*, 54 Cal. L. Rev. 642, 642, 645 (1966). But early congressional attempts to directly regulate housing development did not survive judicial scrutiny, in large part because courts determined that federal efforts to obtain land to build housing violated the Fifth Amendment’s Takings Clause and exceeded the scope of federal authority. See, e.g., *Greenbrier (Lake Cnty. Tr. Co. No. 1391) v. United States*, 40 Fed.Cl. 689, 696 & n.7 (Fed. Cl. 1998) (discussing *United States v. Certain Lands in Louisville*, 78 F.2d 648 (6th Cir. 1935)). As a result of those decisions, Congress shifted course and adopted a “decentralized” approach, through which it “suppl[ied] money and a certain amount of benign control” to incentivize local housing reforms. Friedman, *supra*, at 647-48; *Greenbrier*, 40 Fed.Cl. at 696-98; *Staten v. Hous. Auth. of Pittsburgh*, 638 F.2d 599, 603-04 & n.9 (3d Cir. 1980) (“dual network of federal and state agencies” contribute to this “decentralized public housing program”). That decentralized program is the primary driver of current federal housing policy.

House Resolution 6644 (the “21st Century ROAD to Housing Act” or the “Act”)—a bill currently pending in Congress—is the latest federal foray into the housing market that aims to “increase the supply of housing in America.” H.R.6644, 119th Cong. (as passed by Senate, March 12, 2026). A vast majority of its provisions track the decades-long decentralized federal approach to housing policy—largely by erecting federal spending programs that address housing production, development, and affordability. See, e.g., *id.* §203 (home-repair grant program); *id.* §302 (directing a review of methods to increase modular home construction). As relevant here, however, several provisions depart from that tradition and instead seek to *directly* regulate real-estate transactions involving so-called “large institutional investors” (or “LIIs”). LIIs are defined in the Act as any corporate entity in the “business of investing in, owning, renting, managing, or holding” at least 350 “single-family homes,”¹ whether through “direct[] or indirect[] [] investment control.”² *Id.* §901(a)(4)(A)(i).

LIIs are subject to two key restrictions: (1) a purchase prohibition and (2) a forced-sale provision. Under the purchase prohibition, LIIs are barred on a prospective basis (*i.e.*, after the Act’s effective date) from purchasing additional single-family homes unless the transaction

¹ “Single-family homes” are defined as “structure[s] that contains 2 or fewer dwelling units that are each intended for residential occupancy by a single household.” H.R.6644 §901(a)(3)(A).

² “[D]irect or indirect investment control” is broadly defined to encompass all manner of ownership arrangements. It covers outright ownership, authority over “investment or management decisions,” exercising the role of a general partner or managing member of any entity or investment management company that owns a single-family home, or controlling more than a quarter of equity interest in an entity with an active ownership stake in the home. H.R.6644 §901(a)(4)(B)(i)-(iv).

qualifies as an “excepted purchase.”³ *Id.* §901(b)(1), (2)(A), (3). The Act grants the Secretary of the Treasury authority to promulgate regulations to implement the purchase prohibition in ways that “minimize market disruptions” and “mitigate ... negative impacts on consumers and communities.” *Id.* §901(b)(4)(A)(i)-(ii).

While certain “excepted purchases” evade the purchase prohibition, they nonetheless trigger the forced-sale provision. Under that provision, LIIs that purchase a single-family home in four circumstances—(1) with the intent to sell it; (2) under a build-to-rent program; (3) under a renovate-to-rent program; or (4) within a planned 55-and-older community that is later scrapped—must relinquish ownership within 7 years. More precisely, the provision provides that the LII “shall dispose” of the home by selling it “to an individual home-buyer not later than 7 years after the date of purchase.” *Id.* §901(c)(1)(A). The provision extends special solicitude to the tenant renting at the time that the forced-sale deadline expires (and who has resided on the property for at least six months), as the LII must give such a tenant the right of first refusal to purchase the property before it is advertised more broadly. *See id.* §901(c)(2)(B), (3)(B).⁴ If the existing tenant refuses to purchase the property, and if no other sale is complete after the LII advertises the property for 60 days, the LII is deemed to have complied with the forced-sale provision. *See id.* §901(c)(3)(C).

LIIs that violate either the purchase prohibition or the forced-sale provision face civil penalties of either \$1 million or treble the property’s purchase price, whichever is greater. *See id.* §901(d)(1). Both the purchase prohibition and the forced-sale provision take effect six months after the law is enacted and sunset 15 years later. *See id.* §901(f)(1)-(2).

Analysis

The LII-related provisions in the Act achieve the rare feat of raising serious concerns under three separate constitutional doctrines. First, the forced-sale provision not only appropriates private property without providing for just compensation in violation of the Takings Clause, but also impermissibly takes property for a non-public use. Second, the LII provisions single out a subset of disfavored corporate property owners for discriminatory treatment, thereby violating the equal-protection component of the Fifth Amendment’s Due

³ The Act lists ten “excepted” purchases. H.R.6644 §901(a)(2)(A)-(J). These include, *e.g.*, newly constructed or renovated properties that the owner intends to sell, build-to-rent properties (*i.e.*, new constructions that the investor intends to rent), renovate-to-rent properties (*i.e.*, homes that the investor intends to rent after making renovations worth more than 15% of the purchase price), properties tied to homeownership programs that assist renters with purchasing properties, properties purchased through foreclosure to satisfy pre-existing debts or to mitigate losses, and properties that are part of a community of households with at least one member who is 55 years or older. *Id.* §901(a)(2)(A)-(G), (J).

⁴ The Act permits that tenant to finish the lease’s term and allows the LII to let the tenant renew the lease for up to 36 additional months before the forced sale occurs. *See* H.R.6644 §901(c)(2)(B), (3)(A).

Process Clause. Third, the Act’s direct interference with local housing markets runs afoul of core federalism principles, as it impermissibly authorizes the federal government to intrude deeply into local planning while immediately impacting property values on which so much state and local revenue-raising depends. For any and all of these reasons, Congress should excise these constitutionally problematic provisions from the Act.

I. THE 21ST CENTURY ROAD TO HOUSING ACT VIOLATES THE TAKINGS CLAUSE.

The Takings Clause provides that “private property [shall not] be taken for public use, without just compensation.” U.S. Const. amend. V. As the Supreme Court has explained, “[b]y requiring the government to pay for what it takes, the Takings Clause saves individual property owners from bearing ‘public burdens which, in all fairness and justice, should be borne by the public as a whole.’” *Sheetz v. Cnty. of El Dorado*, 601 U.S. 267, 273-74 (2024) (quoting *Armstrong v. United States*, 364 U.S. 40, 49 (1960)).

The Act’s forced-sale provision flouts those principles. Compelling a property owner to cede the title to his property to another is a quintessential governmental appropriation that triggers the Takings Clause’s protections. And the forced transfer from one property owner to another violates the bedrock constitutional prohibition on takings that are effected for a private—as opposed to public—use.

A. The Act’s Forced-Sale Provision Effects a Taking.

Under general takings principles, government action that triggers the Takings Clause is divided into “*per se* takings” and “regulatory takings.” *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 146-49 (2021). *Per se* takings occur whenever government interference with property effects “a direct government appropriation or physical invasion of private property.” *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 537 (2005). Such *per se* takings impose a categorical obligation on the government to pay compensation without inquiry into the scope or nature of the appropriation. See *Cedar Point*, 594 U.S. at 147-49. By contrast, regulatory takings, which merely impose restrictions on the use of property, require compensation for the loss occasioned by the restriction when—after employing the balancing test set forth in *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978)—a court concludes that such restrictions “go too far.” See *Cedar Point*, 594 U.S. at 148-49.

An ouster via a forced sale of property or a government-compelled transfer of title falls squarely within the scope of the *per se* takings doctrine. The most classic example of a taking occurs when the government “uses its power of eminent domain to formally condemn property” and acquires title to the property—either “for itself or a third party.” *Id.* at 147-48 (emphasis added). “Neither formal acquisition of the property’s title nor actual possession of the property is required for government action to constitute a [*per se*] taking.” *Alford v. Walton Cnty.*, 159 F.4th 844, 855 (11th Cir. 2025). Instead, the Supreme Court has explained that any government action resulting in the ouster from the property or “deprivation of the former owner” of his entire interest in the property suffices to constitute a taking. *United States v. Gen. Motors Corp.*, 323 U.S. 373, 378 (1945).

That comports with bedrock Takings principles. While the Takings Clause imposes a just-compensation restriction on the government’s seizure of property for its own use, the Clause is, if anything, more skeptical of forced transfers of property to third parties. *See infra* Section I.B. Thus, when government action results in “an ‘actual taking of possession and control’” of the property by someone other than the rightful owner, “the taking [i]s as clear as if the Government held full title and ownership.” *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 431 (1982). That is why, for example, the Supreme Court had no trouble concluding that Department of Agriculture regulations that forced raisin growers to cede title to a portion of their crop yield every year constituted a *per se* taking. *See Horne v. Dep’t of Agric.*, 576 U.S. 350, 361 (2015). As the Court explained in *Horne*, because the raisin growers “los[t] the entire ‘bundle’ of property rights in the appropriated raisins” under the regulation, including “the rights to possess, use and dispose of” them,” the government had taken the property in question. *Id.* at 361-62. Similarly, the Court unanimously agreed over a half-century earlier that the federal government effected a *per se* taking when it seized the property and business of a mining company and placed the operation of the mines under the auspices of federal officials; the compelled transfer of ownership amounted to governmental appropriation that triggered the Takings Clause’s protections. *United States v. Pewee Coal Co.*, 341 U.S. 114, 116-17 (1951) (plurality op.); *id.* at 119 (Reed, J., concurring) (“I agree ... there was a ‘taking.’”); *id.* at 121 (Burton, J., dissenting) (same).

The Act’s forced-sale provision runs headlong into the Takings Clause for the same reasons. Although it does not involve a formal exercise of condemnation power, the provision’s command that LIIs “shall dispose” of property that they rightfully own results in government appropriation of the property. H.R.6644 §901(c)(1)(A). Indeed, courts find a *per se* taking whenever “the government has physically taken property for ... someone else,” regardless whether the government action at issue “comes garbed as a regulation (or statute, or ordinance, or miscellaneous decree).” *Cedar Point*, 594 U.S. at 149. Under the forced-sale provision, LIIs “lose the entire ‘bundle’ of property rights” because the federal government, wielding the threat of substantial penalties, forces the LII to transfer the property to a government-preferred individual homebuyer. *Horne*, 576 U.S. at 361. In other words, under the forced-sale provision, the federal government “wrest[s] the rights to possess, use, and exclude from the [LII]” and “t[akes] those rights for” the benefit of an individual buyer. *Alford*, 159 F.4th at 854. That is an indisputable *per se* taking that “triggers the [LII’s] right to just compensation.” *Id.*

The features of the forced-sale provision that limit when the compelled sale occurs do not alter that conclusion. While the forced-sale provision contemplates that the owner can exercise control over the property for the first seven years after purchasing it, there is no escaping the reality that the government effects a taking when it requires the owner to cede the property after that time. That delayed ouster is no less an ouster and no less a taking. As the Supreme Court has reiterated, “[t]he duration of an appropriation ... bears only on the amount of compensation,” not the existence of a taking itself. *Cedar Point*, 594 U.S. at 153. That teaching applies with full force here. Though dispossession is temporarily delayed under the

Act, the loss is permanent once the forced-sale provision compels an LII to sell. And when “[t]itle to the [single-family home] passes” from the LII to an individual homebuyer, that “is a clear physical taking,” as property owners “do not expect their property, real or personal, to be ... taken away.” *Horne*, 576 U.S. at 361.

The forced-sale provision also effects a taking even though it seemingly anticipates that LIIs will retain the proceeds from the forced sale. See H.R.6644 §901(c)(1)(A) (requiring only that the LII “dispose” of the property). *Horne* is again instructive. There, the Department of Agriculture regulation compelling raisin growers to transfer a percentage of their crop yield permitted the growers to recover “any net proceeds” from the government’s own sale of the appropriated raisins. 576 U.S. at 363. Nevertheless, the Supreme Court affirmed that a *per se* taking had occurred all the same. See *id.* As it explained, “when there has been a physical appropriation, ‘we do not ask ... whether it deprives the owner of all economically valuable use’ of the item taken.” *Id.* Hence, “that the growers retain a contingent interest of indeterminate value does not mean there has been no physical taking.” *Id.* So too here. Just because an LII can recoup *something* from the forced sale does not erase the fact that the government’s compelled sale of property (backed by substantial penalties) deprives the LII of its property rights. See *Suitum v. Tahoe Reg’l Plan. Agency*, 520 U.S. 725, 748 (1997) (Scalia, J., concurring) (“If money that the government-regulator gives to the landowner can be counted on the question of whether there *is* a taking” “rather than on the question of whether the compensation for the taking is adequate,” it could sidestep the Takings Clause.). The extent of proceeds comes into play only when calculating the just compensation owed, not whether a taking occurred. See *United States v. 564.54 Acres of Land*, 441 U.S. 506, 510 (1979) (government must place the owner “in as good a position pecuniarily as if his property had not been taken”).⁵

Similarly, the *per se* taking is not undermined by the reality that some LIIs might theoretically retain title to their property if no sale is consummated after 60 days of advertising following a tenant’s refusal to exercise the statutorily compelled right of first refusal. See H.R.6644 §901(c)(3)(C). Whatever complications that contingency might raise as to the ripeness of a court challenge, it does nothing to alter the reality that when the provisions operate as designed, they effect a taking. Moreover, the nature of the forced-sale provision makes the prospect of non-consummated sales unlikely. To be clear, since forced sales naturally benefit

⁵ Besides, the price that an LII can fetch at a forced sale cannot satisfy the government’s obligation to provide just compensation. Under the Takings Clause, just compensation is “measured by ‘the market value of the property at the time of the taking.’” *United States v. 50 Acres of Land*, 469 U.S. 24, 29 (1984). Economic literature has widely recognized that prices obtained at distressed or forced sales are subject to nontrivial—and sometimes substantial—discounts from market prices. See, e.g., John Y. Campbell, et al., *Forced Sales and House Prices*, 101 Am. Econ. Rev. 2108, 2109 (2011) (“forced sales take place at price discounts of about 3-7 percent”); James N. Conklin, et al., *An Alternative Approach to Estimating Foreclosure and Short Sale Discounts*, 134 J. Urb. Econ., No. 103546 (June 2023) (calculating “foreclosure and short sale discounts of approximately 5%”).

buyers who can buy property at bargain prices and reap the benefits of the post-sale price recovery, see Serdar Dinc, et al., *Fire Sale Discount: Evidence From the Sale of Minority Equity Stakes*, 125 J. Fin. Econ. 475 (2017), it is unlikely that many single-family homes will remain unsold at the end of the 60-day advertising window. Regardless, this limit on the forced-sale provision is little different than the “contingent interest” at issue in *Horne*. The Act’s carveout from the forced-sale provision for unsold homes gives the LII a right to retain its own property conditioned on the lack of a buyer—which is practically the dictionary definition of a contingent interest. See 73 Corpus Juris Secundum, Property §7 (Mar. 2026) (defining contingent interest as an interest that “ripen[s] into [] complete ownership” upon “the occurrence of an event [that is] possible to happen”). Furthermore, just as the “speculative hope” that the raisin growers’ “contingent interest” in the net proceeds of the governmental sale of the appropriated raisins would furnish just compensation did not undermine the *per se* taking in *Horne*, the corresponding “speculative hope” that an LII could retain its property after 60 days of advertising cannot defeat the *per se* taking effected by the forced-sale provision. 576 U.S. at 362-63. The LII has “los[t] any right to control the[] disposition” of its property itself. *Id.* at 364.

In sum, the forced-sale provision in the Act effects a *per se* taking of LIIs’ private property. That provision amounts to direct government appropriation of property for the benefit of government-preferred individual homebuyers. That some LIIs might retain ownership and that all LIIs can recover *some* money after the distressed sale of their single-family homes does not compel a contrary conclusion, as an LII’s retention of the sub-market sales price from the distressed sale cannot satisfy the government’s categorical obligation to provide the LII just compensation, see *supra* p.5 n.5—assuming that just compensation could avoid a Takings Clause violation here, given the nature of this rob-Peter-to-pay-Paul taking, but see *infra* Section I.B.

B. The Act’s Compelled Transfer of Property From One Owner to Another Constitutes an Impermissible Taking for a Private Use.

The Takings Clause problems posed by the forced-sale provision run even deeper. As detailed above, the Takings Clause expressly limits any government appropriation of private property to those takings that are for a “*public use*.” U.S. Const. amend. V (emphasis added). The corollary of that limitation is that the Takings Clause does not countenance takings that are effected for an avowed *private* purpose—even when compensation is paid. As detailed below, because the Act’s forced-sale provision effects takings for such verboten purposes, it follows that those forced sales are invalid, even if (contrary to fact) the federal government paid just compensation.

Under current Supreme Court doctrine, the public-use requirement is not demanding. A taking satisfies the Takings Clause’s “public use” requirement if government action “is rationally related to a conceivable public purpose.” *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229,

241 (1984). Even under that relatively lax standard,⁶ however, the Court has made crystal clear that the legislature is not wholly unconstrained and must have a “legitimate” “purpose.” *Kelo v. City of New London*, 545 U.S. 469, 488 (2005). And every decision that has evaluated the “public use” requirement—even when expanding the universe of qualifying “public” purposes—has expressly reaffirmed that, when government takes property for a *private* purpose, it pursues an illegitimate end. As the Court has stated, “it has long been accepted that the sovereign may not take the property of *A* for the sole purpose of transferring it to another private party *B*, even though *A* is paid just compensation.” *Id.* at 477; *Midkiff*, 467 U.S. at 241 (collecting cases). Indeed, that principle is as old as the Nation itself. *See Calder v. Bull*, 3 U.S. (3 Dall.) 386, 388 (1798) (Chase, J.) (“An ACT of the Legislature (for I cannot call it a law)[,] contrary to the great first principles of the social compact, ... that takes property from A. and gives it to B ... is against all reason and justice.”); *Wilkinson v. Leland*, 27 U.S. (2 Pet.) 627, 658 (1829) (Story, J.).

In light of that principle, the Supreme Court has invalidated legislative efforts that accomplish naked welfare transfers between property owners—whether accomplished directly (*e.g.*, via regulation or the exercise of eminent domain) or indirectly (*e.g.*, via the imposition of a tax aimed at inducing the transfer). *See Cole v. City of La Grange*, 113 U.S. 1, 6 (1885) (holding that “the legislature, in the exercise either of the right of eminent domain or of the right of taxation,” lacks the constitutional authority “to take private property, without the owner’s consent, for any but a public object”); *cf. Citizens’ Savings & Loan Ass’n v. City of Topeka*, 87 U.S. (20 Wall.) 655 (1874) (invalidating municipal bonds issued with taxpayer funds for the purpose of assisting a private, iron manufacturer under similar principles). Thus, for example, the Court invalidated a state law that seized land from a railroad company for the avowed purpose of allowing several farmers in the vicinity to build grain elevators because it added up to an unconstitutional “taking of private property ... for [a] private use.” *Mo. Pac.*

⁶ The current standard is ripe for reconsideration. Several justices have criticized this test as insufficiently demanding and inconsistent with a proper understanding of the “public use” limitation. *Eychaner v. City of Chicago*, 141 S.Ct. 2422, 2423 (2021) (Thomas, J., joined by Gorsuch, J., dissenting from denial of certiorari) (“‘Public use’ means something more than any conceivable ‘public purpose,’” as the public must “ha[ve] a right to employ” the appropriated property.); *see Brinkmann v. Town of Southold*, 145 S.Ct. 428 (2024) (Justices Thomas, Gorsuch, and Kavanaugh would have granted a petition whose question presented asked whether property “taken for a public amenity as a pretext for defeating an owner’s plans for another use” violates the Takings Clause). That criticism echoes the sentiments of an overwhelming bipartisan majority of the House of Representatives that condemned *Kelo* the very week that decision came out. H.R. Res. 340, 109th Cong. (2005) (approved by a vote of 365-33). Accordingly, the *Kelo* standard is a prime candidate for reconsideration, particularly since a broad array of states have directly rejected *Kelo* and have adopted more robust standards for assessing whether property is taken for an impermissible private use in the wake of the decision. *See, e.g., Brinkmann v. Town of Southold*, 96 F.4th 209, 221-23 (2d Cir. 2024) (Menashi, J., dissenting) (collecting cases); Jordan Brewington, *Dismantling the Master’s House: Reparations on the American Plantation*, 130 Yale L.J. 2160, 2200 (2021) (“forty-four states have amended their eminent domain laws since *Kelo* came down”).

Ry. Co. v. Nebraska, 164 U.S. 403, 417 (1896). It likewise invalidated a statute that forced another railroad company to build an underground cattle pass under its tracks for the benefit of an adjoining owner of farmland. *Chicago, St. P., M. & O. Ry. Co. v. Holmberg*, 282 U.S. 162, 167 (1930); *cf. Myles Salt Co. v. Bd. of Comm'rs of Iberia & St. Mary Drainage Dist.*, 239 U.S. 478, 485 (1916) (holding that the government could not tax petitioner's property as part of a drainage district, in which the district "ha[d] the special purpose of the improvement of particular property" of other owners at the petitioner's expense). The Court also affirmed an injunction preventing a town from compelling the owner of a public station to dedicate part of its property for a "hack stand" or public kiosk. *Delaware, L. & W.R. Co. v. Town of Morristown*, 276 U.S. 182, 195 (1928). And it determined that a state commission's cap on natural-gas production with the express purpose of compelling gas producers "to purchase gas from those well owners who have not provided themselves with a market and marketing facilities" amounted to "curtail[ing]" the producers' property "solely for the benefit of other private well owners" in violation of the Takings Clause's "public use" limitation. *Thompson v. Consol. Gas Utils. Corp.*, 300 U.S. 55, 58, 78-80 (1937).

Lower courts have followed suit. *See, e.g., Daniels v. Area Plan Comm'n of Allen Cnty.*, 306 F.3d 445, 466-67 (7th Cir. 2002) (private taking when rezoning commission vacated a restrictive covenant to give a private company the option, but not obligation, to build a shopping center); *Theodorou v. Measel*, 53 F.App'x 640, 641 (3d Cir. 2002) (affirming judgment in a private taking case in which the township installed a drainage pipe on plaintiff's property to benefit his neighbors); *Montgomery v. Carter Cnty.*, 226 F.3d 758, 766 (6th Cir. 2000) (county declared a private driveway a county road to benefit the owner's neighbor, who liked to use the driveway to access other roads); *Wheeler v. City of Pleasant Grove*, 833 F.2d 267, 270 n.3 (11th Cir. 1987) (ordinance barring one property owner from building a previously authorized apartment complex based solely on public disapproval not considered for a "public use"); *99 Cents Only Stores v. Lancaster Redevelopment Agency*, 237 F.Supp.2d 1123, 1129 (C.D. Cal. 2001) (transfer of ownership to wholesale store amounted to an improper private use); *Cottonwood Christian Ctr. v. Cypress Redevelopment Agency*, 218 F.Supp.2d 1203 (C.D. Cal. 2002) (same). Notably, moreover, they have continued to apply these principles even after the Supreme Court's decision in *Kelo* appeared to expand the scope of purposes that qualify as public uses. *See, e.g., Henry v. City of Middletown*, 655 F.App'x 451, 464 (6th Cir. 2016) (allegations that city transferred title of an impounded car to a towing company amounted to private taking); *cf. City of Oberlin v. FERC*, 937 F.3d 599, 607 (D.C. Cir. 2019) (granting a gas company the ability to obtain rights-of-way to build a pipeline to meet foreign demand for gas might violate the "public use" limitation).

As all of this demonstrates, it is beyond debate that the Takings Clause renders "void any statute declaring that 'the homestead now owned by A. should no longer be his, but should henceforth be the property of B.'" *Chicago, B. & Q.R. Co. v. City of Chicago*, 166 U.S. 226, 237 (1897) (quoting *Loan Ass'n*, 87 U.S. (20 Wall.) at 663); *Aaron v. Target Corp.*, 269 F.Supp.2d 1162, 1177 (E.D. Mo. 2003) (government "may not use its power of eminent domain in the manner of a 'default broker of land'"), *rev'd on other grounds by* 357 F.3d 768 (8th Cir.

2004); H.R. Res. 340(2)(D) (“[I]t is the sense of the House of Representatives that ... eminent domain should *never* be used to advantage one private party over another.” (emphasis added)).

That is *precisely* what the forced-sale provision attempts to accomplish. By its very terms, the provision compels LIIs to “dispose” of their own property by transferring it “to an individual homebuyer.” H.R.6644 §901(c)(1)(A). That is a bald-faced attempt to compel the sale from one private party to another for the individual buyer’s benefit. That flies in the face of core principles of takings jurisprudence, which do not permit such transfers of ownership. That is why the Ninth Circuit, for example, concluded that a party had adequately alleged that legislative actions aimed at “depriv[ing] [landlords] of their property ... by forced sale” to facilitate a private party’s purchase of the property effected an impermissible taking for a private use. *Armendariz v. Penman*, 75 F.3d 1311, 1321 (9th Cir. 1996) (en banc), *abrogated on other grounds by Crown Point Dev. v. City of Sun Valley*, 506 F.3d 851, 856 (9th Cir. 2007). The same holds true here—Congress cannot compel a “forced sale” of LIIs’ properties simply to transfer title to preferred private owners.

Congress cannot defend the Act’s forced transfers by claiming that the redistribution of private property serves policy goals or that the private benefits of homebuyers are merely incidental to some broader “public”-facing project. The restriction on simply taking property from Peter to benefit Paul cannot be evaded by the legislative belief that Paul is more deserving, that Peter has too much property, or that the redistribution serves policy goals. To be sure, the Supreme Court has generally permitted private transfers of property that are incidental to a broader public program, since the government often utilizes private parties to assist with effectuating its policy goals. Thus, the Court has found the Takings Clause’s “public use” requirement satisfied in circumstances involving the transfer of property to a private developer for public economic-redevelopment projects, as well as the transfer of property to a private utility company that would ultimately supply public services to the community. *See Berman v. Parker*, 348 U.S. 26, 34 (1954) (condemnation of blighted areas to assist in city redevelopment); *Mt. Vernon-Woodberry Cotton Duck Co. v. Ala. Interstate Power Co.*, 240 U.S. 30, 32 (1916) (transfer to private utility company for public power generation). But no court has ever authorized mere naked transfers of property titles to preferred property owners—especially when the government’s sole articulated goal is to benefit another. *See Daniels*, 306 F.3d at 466-67; *Armendariz*, 75 F.3d at 1321; P. Nichols, *The Law of Eminent Domain* §40 (2d ed. 1917) (courts have uniformly “repudiat[ed] the dangerous doctrine that any enterprise which indirectly promotes the public welfare is necessarily a public use”). Indeed, the Sixth Circuit relied on those principles to bar a prior federal effort to condemn property to build and sell houses to other private parties. *See Certain Lands*, 78 F.2d at 687-88 (“The taking of one citizen’s property for the purpose of improving it and selling or leasing it to another” “cannot ... be held to be a public use.”)⁷ The Act seeks to pursue that same impermissible end

⁷ The *Certain Lands* court considered the private transfer of ownership particularly problematic because the *federal* government had taken the private housing. *See* 78 F.2d at 687-

here too. It expressly identifies the conferral of benefits on private homebuyers as Congress' goal: The forced-sale provision is meant to supply "single-family homes [] to *individuals*." H.R.6644 §901(e)(3)(A) (emphasis added). Moreover, the Act does not evade takings review just because the federal government is compelling the transfer directly, as opposed to condemning the property and then selling it to individual homebuyers—it in fact confirms that the Takings Clause's protections apply. In either case, the federal government is attempting to use its authority to accomplish what the Takings Clause does not allow: a private transfer of property from A to B. *See Cedar Point*, 594 U.S. at 147; *accord Cummings v. Missouri*, 71 U.S. (4 Wall.) 277, 325 (1865) ("what cannot be done directly cannot be done indirectly").

The Act's forced-sale provision and its compelled transfer of property is thus a clear example of a private taking that directly violates core takings principles—and pursues a policy goal that falls outside of the federal government's purview to boot. *See infra* Part III. The forced-sale provision thus is constitutionally impermissible even if the government managed to provide just compensation. *See Kelo*, 545 U.S. at 477.

II. THE 21ST CENTURY ROAD TO HOUSING ACT RUNS AFOUL OF THE EQUAL-PROTECTION COMPONENT OF THE DUE PROCESS CLAUSE.

Apart from violating the Takings Clause, the Act's restrictions on LIIs—via its prohibition on LIIs purchasing single-family homes in particular circumstances, as well as the forced-sale provision—singles them out for discriminatory treatment in violation of the equal-protection component of the Fifth Amendment.

The Supreme Court has long recognized that the Due Process Clause of the Fifth Amendment restrains impermissible discriminatory treatment by the federal government despite lacking explicit language barring unequal treatment. *See Bolling v. Sharpe*, 347 U.S. 497, 499-500 (1954). Indeed, even though the Fifth Amendment's guarantee of equal protection is "implicit," the "approach to Fifth Amendment equal protection claims has always been precisely the same as to equal protection claims under the Fourteenth Amendment." *Sessions v. Morales-Santana*, 582 U.S. 47, 52 n.1 (2017); *Adarand Constructors, Inc. v. Peña*, 515 U.S. 200, 217 (1995) ("equal protection obligations imposed by the Fifth and the Fourteenth Amendments a[re] indistinguishable"). The Fifth Amendment accordingly protects those who "ha[ve] been intentionally treated differently from others similarly situated" by the government with respect to their fundamental rights, which triggers heightened scrutiny, *Plyler v. Doe*, 457 U.S. 202, 216-17 (1982), or when "there is no rational basis for the difference in treatment," *Vill. of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000); *see City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976) (in the equal-protection context, laws that "affect fundamental rights" trigger more than rational-basis review).

88 (contrasting federal authority with broader state police powers). In other words, not only did the Takings Clause not countenance the private taking, but the federal government also lacked the authority to pursue the purportedly "public" goal of "carrying out a low-cost housing and slum clearance project." *United States v. Certain Lands in City of Detroit*, 12 F.Supp. 345, 347 (E.D. Mich. 1935).

The differential treatment under the Act is unmistakable. The provisions in §901 impose obligations on LIIs and on them alone, and those burdens trench on their fundamental rights to own and dispose of private property. In other words, the restrictions on purchasing certain single-family homes and owning single-family homes after seven years are imposed not on all property owners, but only on specific disfavored corporate persons (those who own at least 350 single-family homes). Under federal law, “[n]atural persons and business entities” that own the same kind of properties “are equated for [equal-protection] purposes.” *Hignell-Stark v. City of New Orleans*, 154 F.4th 345, 354 (5th Cir. 2025); see 1 U.S.C. §1 (“person” includes “corporations, companies, associations, firms, partnerships, societies, and joint stock companies, as well as individuals”). And for good reason, as a corporate entity “is simply a form of organization used by human beings to achieve desired ends.” *Burwell v. Hobby Lobby Stores, Inc.*, 573 U.S. 682, 706 (2014).

Given the facially discriminatory treatment, the next step in the equal-protection inquiry is to assess what level of scrutiny applies. Here, the Act triggers strict scrutiny because it discriminates on the basis of the exercise of fundamental rights. As the Supreme Court has explained, to establish whether a right is fundamental, courts “look to the Constitution to see if the right infringed has its source, explicitly or implicitly, therein.” *Plyler*, 457 U.S. at 217 n.15. The Takings Clause plainly safeguards LIIs against the Act’s interference with their property rights. See *supra* Part I; accord *Kelo*, 545 U.S. at 487 n.17 (noting that private takings “implicate other constitutional guarantees,” such as the equal-protection guarantee evaluated in “*Village of Willowbrook v. Olech*”). Moreover, the Supreme Court has long underscored that even apart from the Takings Clause, property rights, including the right to “purchase, . . . sell, and convey property,” are among “those fundamental rights which are the essence of civil freedom.” *The Civil Rights Cases*, 109 U.S. 3, 22 (1883). The Act’s purchase prohibition and forced-sale provision therefore “infringe[] [on] constitutionally protected right[s]”—ones that the Supreme Court has long declared fundamental. *Att’y Gen. v. Soto-Lopez*, 476 U.S. 898, 904 (1986) (plurality op.). Accordingly, strict scrutiny applies, which means that the government would have to show that “its classification has been precisely tailored to serve a compelling governmental interest.” *Plyler*, 457 U.S. at 217. The government could never demonstrate that strict scrutiny, which is “the most demanding test known to constitutional law,” is met here. *Free Speech Coal., Inc. v. Paxton*, 606 U.S. 461, 484 (2025).

Indeed, Congress could not satisfy even far-less-demanding rational-basis review, which requires that “the classification drawn by the statute [be] rationally related to a legitimate state interest.” *City of Cleburne v. Cleburne Living Ctr.*, 473 U.S. 432, 440 (1985). That is because Congress has marshalled no evidence nor identified any legitimate governmental interest that it is pursuing by imposing restrictions on LIIs. The Act is devoid of any findings of fact, which alone suffices to show that the Act flunks equal-protection scrutiny. See *Hignell-Stark*, 154 F.4th at 355 (“there must be *something* to suggest that the business ban is rationally related to the [government’s] legitimate interests”). In fact, the sole justification that Congress has offered for its restrictions is that their entire purpose is to economically favor individual homebuyers at the expense of LIIs. See H.R.6644 §901(d)(3)(A). That is insufficient: “[B]are

economic protectionism” and “granting favors to politically important actors” is “not a valid justification for discriminatory treatment.” *Allied Concrete & Supply Co. v. Baker*, 904 F.3d 1053, 1064 (9th Cir. 2018); see *Loan Ass’n*, 87 U.S. (20 Wall.) at 664 (rejecting as a valid purpose using governmental authority “to bestow [benefits] upon favored individuals to aid [their] private enterprises”); see also *Craigmiles v. Giles*, 312 F.3d 220, 224 (6th Cir. 2002).

Nor could Congress defend the restrictions based on some other *post hac* justification. For instance, there is no basis to suggest that corporate owners undermine neighborhood character or are more likely to cause nuisance behavior, or that any of the other “factors which are properly cognizable in a zoning proceeding” (where these property-related policies are usually evaluated) are triggered by corporate ownership. *Cleburne*, 473 U.S. at 448. Such arguments stumble out of the gate because they would only underscore that the federal government is impermissibly trying to regulate truly local affairs in violation of core federalism principles. See *infra* Part III. Furthermore, prohibiting “non-natural person homeowners ... is ‘so attenuated’ from livability and quality-of-life concerns ... as to render [any] distinction between business-owned and individual-owned homes arbitrary.” *Hignell-Stark*, 154 F.4th at 356. That is reinforced by the fact that the Act burdens only *some* corporate property owners but not others (*i.e.*, no corporate entities owning fewer than 350 single-family homes). Allowing some corporate ownership fatally undermines the proposition that the mere fact that the owner is a juridical person itself will have negative land-use impact. Instead, that distinction confirms that Congress’ disfavored treatment is motivated by “mere negative attitudes, or fear” about the economic realities of allowing certain corporate entities to exercise their constitutionally protected property rights to buy and sell what the government deems too many single-family homes. *Cleburne*, 473 U.S. at 448. Though the federal government may wish to rebalance property ownership to favor individual homebuyers, that is “not [a] permissible bas[i]s” for disparate treatment—the Fifth Amendment does not permit the government to pursue discrimination for the sake of discrimination. *Id.*

In the end, the purpose of the Act’s LII-specific provisions is clear: to facilitate the federal government’s preferred arrangement of property ownership. *Cf. Energy Rsrvs. Grp. v. Kan. Power & Light Co.*, 459 U.S. 400, 412 (1983) (“provid[ing] a benefit to special interests” is not a “legitimate public purpose” for a regulation). But the federal government lacks authority to give an economic leg-up to individual homebuyers simply because it prefers that they—rather than certain corporate entities—own single-family homes. *Mo. Pac.*, 164 U.S. at 417 (compelled transfers of property are without “due process of law”). Simply put, the government is not constitutionally authorized to act as a “default broker of land.” *Aaron*, 269 F.Supp.2d at 1177; see *Armendariz*, 75 F.3d at 1322-23 (noting that the Supreme Court has often treated private takings and the conferral of benefits on one property owner at the expense of another as due process violations). The purchase prohibition and forced-sale provision thus cannot survive equal-protection scrutiny under rational-basis review, much less strict scrutiny.

III. THE 21ST CENTURY ROAD TO HOUSING ACT POSES SERIOUS FEDERALISM PROBLEMS.

On top of the takings and equal-protection violations, the Act also violates core federalism principles by intruding deeply into matters of traditional state and local concern.

Given the unique federal structure under the Constitution, “States have broad authority to enact legislation for the public good,” whereas the federal government “has no such authority and ‘can exercise only the powers granted to it.’” *Bond v. United States*, 572 U.S. 844, 854 (2014). One of Congress’ enumerated powers is the power to “regulate Commerce ... among the several States.” U.S. Const. art. I, §8, cl.3. The Supreme Court has construed the Commerce Clause to authorize federal regulation of matters that implicate (1) “the channels of interstate commerce,” (2) “the instrumentalities of interstate commerce,” and (3) “activities that substantially affect interstate commerce.” *Gonzales v. Raich*, 545 U.S. 1, 16-17 (2005). The latter category has generally enabled broad categories of federal regulation in areas that seemingly implicate matters that are local in nature—from “a farmer’s decision to grow wheat for himself and his livestock” to “a loan shark’s extortionate collections from a neighborhood butcher shop.” *NFIB v. Sebelius*, 567 U.S. 519, 537 (2012) (Roberts, C.J., op.).

Although broad interpretations of the Commerce Clause render it “expansive,” *United States v. Morrison*, 529 U.S. 598, 608 (2000), it is neither a plenary nor a police power; the Clause still “has limits,” *Maryland v. Wirtz*, 392 U.S. 183, 196 (1968). The Supreme Court has emphasized that certain activities—particularly matters traditionally reserved to the states—are truly local and beyond the federal government’s reach, *see, e.g., United States v. Lopez*, 514 U.S. 549, 567 (1995), even as it has acknowledged that some truly local activity has an “undoubtedly significant” effect on the “national economy,” *Morrison*, 529 U.S. at 615-16. Those same desires to safeguard spheres of local and state authority, moreover, have led the Court to adopt interpretations of federal statutes that avoid interfering with traditionally local affairs. As the Court has explained, Congress is presumed to legislate against the backdrop of certain background principles that are “grounded in the relationship between the Federal Government and the States under our Constitution.” *Bond*, 572 U.S. at 857-58. And when federalism concerns are at play, the Court has insisted that “those charged with the duty of legislating [must be] reasonably explicit” in stating their intention to “radically readjust[] the balance of state and national authority.” *BFP v. Resol. Tr. Corp.*, 511 U.S. 531, 544 (1994).

One area of “traditional state responsibility” that has prompted the Supreme Court to invoke this background principle of construction is land use. That is because land use, zoning regulations, and local planning are areas of law that “are peculiarly within the province of state and local legislative authorities.” *Dan’s City Used Cars, Inc. v. Pelkey*, 569 U.S. 251, 264 (2013); *cf. Lake Country Ests., Inc. v. Tahoe Reg’l Plan. Agency*, 440 U.S. 391, 402 (1979) (“The regulation of land use is traditionally a function performed by local governments.”); *accord Green Valley Invs. v. Winnebago Cnty.*, 794 F.3d 864, 870 (7th Cir. 2015). Hence, the Supreme Court has declined to read a bankruptcy code provision regarding foreclosures to displace state law and thereby place “[t]he title of every piece of realty purchased at

foreclosure ... under a federally created cloud.” *BFP*, 511 U.S. at 544. It has refused to read environmental laws to authorize federal agencies to interfere with local property, such as municipal landfills, *Solid Waste Agency of N. Cook Cnty. v. U.S. Army Corps of Eng’rs*, 531 U.S. 159, 174 (2001), or wetlands on private property that are not connected to other waterways, *see Sackett v. EPA*, 598 U.S. 651, 662-63, 680 (2023). And it has intimated that an agency’s disease-prevention authority does not authorize the federal government to interfere with landlord-tenant relationships. *See Ala. Ass’n of Realtors v. HHS*, 594 U.S. 758, 764 (2021).

The throughline in all of these cases is that the Supreme Court has explicitly recognized that federal interference with local property matters would raise serious federalism concerns. Indeed, while the Court did not address an express federal effort to directly regulate land-use or zoning matters in the preceding cases, the “striking implications for federalism and private property rights” of adopting broader interpretations of the federal statutes at issue prompted the Court in each instance to avoid interpretations that would allow federal regulatory authority to interfere with land-use matters. *U.S. Forest Serv. v. Cowpasture River Pres. Ass’n*, 590 U.S. 604, 621 (2020). In other words, the Court has never reached the conclusion that the Constitution authorizes the federal government to directly legislate regarding local property-law matters. *Cf. Hodel v. Va. Surface Min. & Reclamation Ass’n*, 452 U.S. 264, 281 (1981) (Congress’ authority to regulate interstate sale and transportation of coal necessarily included the authority to regulate “surface coal mining,” which in turn touched on land-use concerns). It has instead hewed to the general principle that “[t]he Constitution has not federalized [] substantive [property] law.” *Lindsey v. Normet*, 405 U.S. 56, 68 (1972); *accord Phillips v. Wash. Legal Found.*, 524 U.S. 156, 164 (1998) (property derives from “an independent source such as state law”).

The Act’s restrictions on LIIs run afoul of these bedrock principles. Its core restrictions on LIIs target quintessential local activity—namely, the purchase, ownership, and sale of properties with single-family homes. The whole point of the purchase prohibition is to prevent LIIs (including purely intrastate corporate entities that buy property in one locality) from buying single-family homes. *See* H.R.6644 §901(b)(1). And the forced-sale provision dictates which entity’s name is recorded on the property title by compelling LIIs to offer their own homes for sale at the end of a seven-year period. *Id.* §901(c).⁸ Moreover, the forced-sale provision is triggered when LIIs have purchased the homes in circumstances where the transaction is very likely related to a local development program—new constructions, homes under build-to-rent programs, homes under renovate-to-rent programs, and homes connected

⁸ The forced-sale provision contains a narrow provision aimed at preserving “State or local tenant-landlord laws regarding requirements related to lease renewal processes or leasing periods.” H.R.6644 §901(c)(3)(D). That exception does not alter the fact that the provision directly interferes with a quintessential local property matter: who owns the property itself. Furthermore, that carveout underscores that Congress is well aware that the Act regulates land-use matters that are traditionally left to states and localities to address.

to planned 55-and-older communities. *Id.* §901(a)(2)(A)-(C), (J). Put another way, each purchase that triggers the forced-sale obligation typically results from efforts by LIIs to develop a local housing market and would, as a result, require input from local authorities that have the primary responsibility for land-use and zoning decisions. *See* Edward J. Pinto & Tobias Peter, *Senate Investor Ban to Cut Supply & Hurt Low-Income Families*, Am. Enter. Inst. 8 (Apr. 2, 2026), <https://perma.cc/N76F-57TQ> (explaining that build-to-rent programs are “often operated as professionally managed communities”). Plus, LIIs often shoulder the financial costs and risks of “rehabilitat[ing] ... aging and distressed housing stock,” which is “often beyond the capacity of typical homebuyers,” making them a key player in localities’ redevelopment and land-use programs. *Id.* at 9. But because the Act would dictate which corporate owners can purchase single-family homes and which cannot, it would expressly limit the pool of property owners that can assist with such local planning efforts. The Act thus envisions the federal government as an interloper in local land-use decisions—a result that has unprecedented and “striking implications for federalism and private property rights.” *Cowpasture*, 590 U.S. at 621.

Under federalism principles, those local planning decisions lie beyond the reach of the federal government. Time and again, the Supreme Court has reiterated the importance of preserving the traditional realm of regulatory authority over land-use and zoning decisions, which are “peculiarly within the province of state and local legislative authorities.” *Dan’s City*, 569 U.S. at 264; *see supra* pp.13-14. And Congress has never before directly interfered in the management and administration of local planning matters, as “private property” and “real estate” is traditionally “left [] exclusively to the states.” *Parkersburg & O.R. Transp. Co. v. City of Parkersburg*, 107 U.S. 691, 701 (1883); *see Certain Lands*, 78 F.2d at 686 (holding that federally superintended housing development projects did not fall within Congress’ power to promote the “general Welfare of the United States,” given that reasoning would mean the authority was “practically unlimited”). The “‘lack of historical precedent,’ coupled with the breadth of authority that [Congress] now claims, is a ‘telling indication’ that the [Act] extends beyond [Congress’] legitimate reach.”⁹ *NFIB v. OSHA*, 595 U.S. 109, 119 (2022).

In fact, two other features of the Act exacerbate the federalism problems with the forced-sale provisions. First, it purports to delegate authority to Treasury Department officials to intrude deeply into local land-use matters. The Secretary is authorized under the Act to promulgate rules that effectuate the restrictions on LIIs in a manner that “minimize[s] market disruptions” and “mitigate[s], to the extent possible, negative impacts on consumers and communities.” H.R.6644 §901(b)(4)(A)(i)-(ii). Those open-ended policy goals could enable the Secretary to justify federal regulations that address a broad range of local land-use matters. From a federalism standpoint, the only thing worse than having Congress make unprecedented intrusions into local land-use matters is having unelected federal bureaucrats superintending

⁹ It bears emphasizing that, if the Act were enacted in its current form and were challenged in court, the government’s interpretation of the law would receive no deference in light of *Loper Bright Enters. v. Raimondo*, 603 U.S. 369 (2024).

decisions that have historically been made by politically accountable officials directly responsive to local voters. *See NFIB v. OSHA*, 595 U.S. at 117-19. Second, the Act’s LII restrictions will have an immediate deflating effect on property values. *See supra* p.5 n.5; Pinto & Peter, *supra*, at 17 (noting that investment and build-to-rent activity has already slowed based solely on the mere policy risk that these LII provisions might be enacted). Indeed, the stated intent of the law is to make housing more affordable. *See* H.R.6644 §901(e) (LII restrictions are “aimed at preserving and expanding the supply of single-family homes available to individuals”); *id.* §901(d)(2) (directing that penalties exacted from LIIs for violations of the purchase prohibition and forced-sale provision be used to fund construction of new single-family homes and provide grant assistance to individual homebuyers). But artificially deflating property values also artificially deflates the tax base on which countless local governments depend for revenue. Putting aside the obvious takings and equal-protection problems, if local governments want to experiment with the kind of restrictions contemplated in the Act, they can directly account—and will be accountable—for the impact of property values and the tax base. But to have those problems thrust upon them by Congress is quite a different matter and constitutes a further disregard of the traditional federal-state balance protected by principles of federalism.

Conclusion

The 21st Century ROAD to Housing Act is constitutionally flawed thrice over. Its forced-sale provision takes the property of LIIs in violation of the Takings Clause: It not only effects takings lacking just compensation, but also effects impermissible private takings for which *no* compensation can remedy the constitutional violations. Moreover, by burdening only LIIs, the Act unconstitutionally discriminates against certain property owners with no valid basis, all in violation of the Constitution’s equal-protection guarantee. And the Act also reflects an impermissible federal foray into local planning efforts in violation of core federalism principles. Thus, as currently written, the Act is a road that leads deep into unconstitutional territory.