SAVING THE AMERICAN DREAM: ADAPTING ANTI-CORPORATE FARMING LAWS TO PROTECT SINGLE-FAMILY HOUSING

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Throughout the twentieth century, several states adopted a new type of laws: Anti-Corporate Farming (ACF) laws. These laws generally prohibit corporations from owning farmland or engaging in the business of farming. They were originally intended to "encourage and protect the family farm as a basic economic unit" and "insure it as the most socially desirable mode of agricultural production." While subject to criticism, these laws generally pass constitutional muster and remain active components of state-level corporate regulatory schemes.

Today, America faces a new wave of corporate consolidation—in single-family rental (SFR) housing. In the wake of the Great Recession, institutional investors, taking advantage of new financial instruments and federal government policy, purchased large numbers of homes out of foreclosure, a trend that continues today. Most proposed solutions to this problem have been evenhanded regulations that focus on tenants: expanded rent control laws, stronger eviction protections, and financial disincentives for Corporate Landlords.

This Note argues that states should consider restricting corporate ownership of SFRs, using ACF laws as a model. Previous scholarship has identified expanded ACF laws as a solution to current trends of consolidation in rural land. But this Note is the first to argue that ACF laws can also be adapted to the residential context to limit corporate ownership of single-family rental housing.

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INTRODUCTION

Throughout the twentieth century, several states adopted a new type of laws: Anti-Corporate Farming (ACF) laws. These laws, adopted in waves throughout the century,[1] generally prohibit corporations from owning farmland or engaging in the business of farming.[2] Some early ACF laws were passed during the Great Depression, when corporations consolidated massive tracts of land through farm foreclosures.[3] More recent ACF laws were enacted in the 1970s, when similar patterns of consolidation led lawmakers to seek to "encourage and protect the family farm as a basic economic unit" and to "insure it as the most socially desirable mode of agricultural production."[4] ACF laws, while subject to constitutional challenges[5] and criticism,[6] still stand as valid constraints on corporate activity.[7] And they remain active parts of state legislative schemes—North Dakota, which enacted one of the first ACF laws, made sweeping amendments to its law in April 2023.[8]

Today, America faces a new wave of corporate consolidation—in single-family rental (SFR) housing. In the wake of the Great Recession,[9] institutional investors, taking advantage of new financial instruments and federal government policy, purchased large numbers of homes out of foreclosure.[10] This "financialization" push continues today. Private equity firms, banks, and other financial institutions (collectively, "Corporate Landlords") buy up single-family houses—either directly or by purchasing packages of mortgages—and convert them into rental property to earn a

1. See infra section I.A.

2. E.g., Minn. Stat. § 500.24 subdiv. 3 (2024).

3. See infra section I.A.

4. See Minn. Stat. § 500.24 subdiv. 1.

5. See infra section I.C.

6. See infra section I.D.

7. See infra section I.C.

8. See Burgum Signs Bill Modernizing State Law to Encourage Growth in Animal Agriculture in North Dakota, N.D. Off. of the Governor (Apr. 28, 2023), https://www.governor.nd.gov/news/burgum-signs-bill-modernizing-state-law-encourage-growth-animal-agriculture-north-dakota [https://perma.cc/YX49-PHJV].

9. "Great Recession" refers broadly to the financial crisis starting in 2007, when a series of foreclosures caused a collapse in the mortgage-backed securities market and a broader economic recession. See John Weinberg, The Great Recession and Its Aftermath, Fed. Rsrv. Hist. (Nov. 22, 2013), https://www.federalreservehistory.org/essays/great-recession-and-its-aftermath [https://perma.cc/NE98-E9PT].

10. See infra section II.A.

profit.[11] This financialization of single-family rentals has been cited as the source of increased rents, heightened rates of eviction, and increased costs of living.[12]

Most proposed solutions to this problem have been evenhanded regulations that focus on tenants—expanded rent control laws, stronger eviction protections, and financial disincentives for Corporate Landlords.[13] Yet, with the exception of a lone bill proposed in Minnesota,[14] policymakers overlook another solution: restricting corporations from acting as landlords entirely. This Note argues that states should consider adopting such restrictions, using ACF laws as a model. Previous scholarship has identified expanded ACF laws as a solution to current trends of consolidation in rural land.[15] But this Note is the first to argue that ACF laws can also be adapted to the residential context to limit corporate ownership of single-family rental housing.

This Note proceeds as follows: Part I introduces ACF laws and their history, reviews their main provisions, and discusses challenges to their constitutionality and normative validity. Part II then explains the financialization of single-family housing in the United States: its genesis in the wake of the Great Recession, the costs of financialization, and the solutions that have previously been proposed. Finally, Part III argues that legislatures can use ACF statutes as a model for restrictions on Corporate Landlords, offers normative arguments for their effectiveness, and proposes statutory language for legislators to consider.

I. THE ANTI-CORPORATE FARMING LAWS

This Part introduces the ACF laws from the states that have adopted them. It begins with the legislative history of the ACF laws[16] and surveys their main provisions.[17] Next, it turns to the legal challenges that have

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11. See infra section II.A.

12. See infra section II.B.

13. See infra section II.C.

14. See H.F. 685, 93d Leg. (Minn. 2023). Minnesota's bill only bans one specific activity—corporations *converting* single-family housing into rental property. Id.; see also infra section II.C.6.

15. See, e.g., Vanessa Casado Pérez, Ownership Concentration: Lessons From Natural Resources, 117 Nw. U. L. Rev. 37, 59–61 (2022) (evaluating ACF laws for conservation contexts); Megan Dooly, Note, International Land Grabbing: How Iowa Anti-Corporate Farming and Alien Landowner Laws, as a Model, Can Decrease the Practice in Developing Countries, 19 Drake J. Agric. L. 305, 318–21 (2014) (applying ACF laws in international agricultural contexts); Stephen George, Comment, Not for Sale: Why Congress Should Act to Counter the Trend of Massive Corporate Acquisitions of Real Estate, 6 Bus. Entrepreneurship & Tax L. Rev. 97, 112–13 (2022) (arguing for a federal ACF law to protect farms).

16. See infra section I.A.

17. See infra section I.B.

been levied against these ACF laws, both successful and unsuccessful.[18] Finally, it concludes by reviewing normative criticisms of the ACF laws.[19]

A. *History of the Anti-Corporate Farming Laws*

Nine states have enacted ACF laws:[20] Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Wisconsin.[21] These laws have taken two forms: statutes[22] and constitutional provisions.[23]

Oklahoma was the first state to adopt an ACF law, including one in its original constitution in 1907.[24] Kansas and North Dakota came next, both enacting their laws during the Great Depression.[25] Each of these laws was seen as a protective measure for farmers in the state.[26] After a several-decade lull, Minnesota and Wisconsin enacted their ACF laws in 1973.[27] Minnesota's law became the model for similar laws in Missouri, Iowa, and South Dakota.[28] Finally, Nebraska enacted its ill-fated law through a constitutional referendum in 1982.[29]

These laws have not been stagnant since their enactment. Oklahoma, whose original law prohibited only ownership of farmland, expanded its law to prevent corporations from operating farms, even if management is

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18. See infra section I.C.

19. See infra section I.D.

20. Other states have enacted limits on alien corporate ownership of farmland or size restrictions on corporate farms. These are often considered a type of ACF law but are outside the scope of this Note. See Micah Brown & Nick Spellman, Statutes Regulating Ownership of Agricultural Land, Nat'l Agric. L. Ctr., https://nationalaglawcenter.org/state-compilations/aglandownership/ [https://perma.cc/8F77-JRSZ] (last updated Feb. 27, 2025) (compiling and classifying various state restrictions on land ownership).

21. Neb. Const. art. XII, § 8(1) (repealed 2006); Okla. Const. art. XXII, § 2; Iowa Code § 9H.4 (2024); Kan. Stat. Ann. § 17-5904(a) (West 2025); Minn. Stat. § 500.24 (2024); Mo. Ann. Stat. § 350.015 (2024); N.D. Cent. Code § 10-06.1 (2024); Okla. Stat. tit. 18, § 955 (2024); S.D. Codified Laws § 47-9A-3 (2025); Wis. Stat. & Ann. § 182.001(1) (2025). Nebraska's law has since been invalidated. See Jones v. Gale, 470 F.3d 1261 (8th Cir. 2006).

22. See, e.g., Minn. Stat. § 500.24.

23. See, e.g., Okla. Const. art. XXII, § 2.

24. See Brian F. Stayton, A Legislative Experiment in Rural Culture: The Anti-Corporate Farming Statutes, 59 UMKC L. Rev. 679, 682–83 (1991).

25. Id. at 681–83.

26. North Dakota was reacting to financial institutions that had foreclosed on agricultural land. T.P. McElroy, North Dakota's Anti-Corporate Farming Act, 36 N.D. L. Rev. 96, 96 (1960). Kansas reacted to a large farming corporation that was ousted from the state for exceeding its corporate charter. Stayton, supra note 24, at 681; see also State ex rel. Boynton v. Wheat Farming Co., 22 P.2d 1093, 1102 (Kan. 1933).

27. Stayton, supra note 24, at 683–84.

28. Id. at 683.

29. See id. at 684.

detached from ownership.[30] North Dakota has amended its laws multiple times, first in 1981[31] and most recently in 2023.[32] South Dakota also attempted to strengthen its ACF law by codifying it in the state's constitution.[33]

B. *Anatomy of an ACF Law*

This section addresses the various provisions of the ACF laws. Each of these ACF laws is unique: They were passed by legislatures in different states with different policy goals. Given these differences, this section does not comprehensively catalog the ACF laws. Rather, it identifies illustrative examples from the laws and highlights differences with legal significance.

1. *Statement of Purpose.* — Two of the ACF laws begin with a statement of their purpose, which describes the states' belief in the importance of the family farm and the dangers posed by corporate farming.[34] These sections provide useful color and introduce the restrictions that follow.

2. *Restricted Entities.* — The ACF laws then define the entities that the prohibition applies to ("restricted entities"). The ACF laws all begin with broad definitions and provide specific exemptions in later provisions. Some laws only include corporations and limited liability companies (LLCs) within their scope.[35] Others are much more expansive, also restricting pension or investment funds, trusts, and limited partnerships.[36] And the broadest law bars any "person, corporation, association or any other entity" from engaging in the business of farming or owning farmland, unless it meets an exception.[37]

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30. See id. at 682 ("After [a 1969 state supreme court decision,] the Oklahoma legislature amended its statute to provide for several limitations upon corporations engaged in agricultural production.").

31. Id. at 682–83. Before 1981, North Dakota generally restricted *all* corporations from farming. The 1981 amendments created exceptions for domestic family farm corporations that earned most of their income from farming operations. See id.

32. H.B. 1371, 68th Leg. Assemb., Reg. Sess. (N.D. 2023). The 2023 amendment adds additional exemptions for LLCs and corporations that primarily engage in farming, even if the LLC members are unrelated. See N.D. Off. of the Governor, supra note 8.

33. See S.D. Farm Bureau, Inc. v. Hazeltine, 340 F.3d 583, 587–88 (8th Cir. 2003) (describing the provisions of "Amendment E," passed through a constitutional referendum).

34. Compare S.D. Codified Laws § 47-9A-1 (2025) ("The Legislature of the State of South Dakota recognizes the importance of the family farm to the economic and moral stability of the state, and the Legislature recognizes that the existence of the family farm is threatened by conglomerates in farming."), with Minn. Stat. § 500.24 subdiv. 1 (2024) ("The legislature finds that it is in the interests of the state to encourage and protect the family farm as a basic economic unit, to insure it as the most socially desirable mode of agricultural production, and to enhance and promote the stability and well-being of rural society . . . .").

35. E.g., S.D. Codified Laws §§ 47-9A-2 to -3; N.D. Cent. Code § 10-06.1-02 (2024).

36. E.g., Minn. Stat. § 500.24 subdiv. 3.

37. See Okla. Stat. tit. 18, § 955 (2024). Despite its apparently broad scope, the first exception in Oklahoma's statute excepts "[n]atural persons" from the prohibition. Id.

3. *Prohibited Activities*. — After defining the restricted entities, each ACF law identifies a list of prohibited activities. Oklahoma and South Dakota prohibit any restricted entity from being chartered or licensed for the purpose of undertaking prohibited activities.[38] Oklahoma does not allow restricted entities to "engage in farming or ranching, or own or lease any interest in land to be used in the business of farming or ranching."[39] Iowa's law, in contrast, only provides that a covered entity may not "acquire or otherwise obtain or lease any agricultural land in [Iowa]."[40] The other ACF laws adopt a mix of these restrictions, using various terms to describe "owning" land.[41]

4. *Excepted Entities*. — Each of the ACF laws excepts several entities that meet certain qualifications from the law's scope. These exceptions reflect the policies of the state legislatures in favoring certain types of organizations that they feel would not offend the law's purpose.[42]

For example, most ACF laws exclude some type of "family farm corporation"[43] from the scope of their application. Generally, these corporations may only have a limited number of shareholders; all shareholders must be natural persons; and a majority of them must be related by kinship.[44] They also often limit the corporate purpose to farming activity and require at least one member of the family to be actively engaged in farming.[45]

ACF laws also often exempt "[a]uthorized farm corporations."[46] These exemptions also require a connection to farming but replace the kinship requirement with stricter limits on the corporate structure. Minnesota requires shareholders to be natural persons[47] and limits the total number of shareholders to five.[48] Owners of a majority of the shares must also actively engage in farming, and the corporation must only have

38. See Okla. Const. art. XXII, § 2; Okla. Stat. tit. 18, § 951; S.D. Codified Laws § 47-9A-1.

39. Okla. Stat. tit. 18, § 955.

40. Iowa Code § 9H.4 (2024).

41. See, e.g., Okla. Const. art. XXII, § 2 (applying the restriction to "real estate [not] located in incorporated cities and towns"); S.D. Codified Laws § 47-9A-3 (prohibiting taking an interest, whether "legal, beneficial or otherwise, in any title to real estate . . . capable of being used for farming").

42. Nebraska, for example, in its invalidated law, exempted "tribal corporations." Neb. Const. art. XII, § 8(C) (repealed 2006). South Dakota, meanwhile, exempts bank and trust companies in the state. S.D. Codified Laws § 47-9A-4.

43. E.g., Minn. Stat. § 500.24 subdiv. 2(c) (2024).

44. See, e.g., id. Minnesota lets other limited liability entities—partnerships, trusts, and LLCs—claim similar exceptions. Id. subdiv. 2(d), (f).

45. E.g., id. subdiv. 2(c).

46. E.g., id. subdiv. 2(e) (internal quotation marks omitted).

47. Id. subdiv. 2(e)(2) (also allowing a "family farm trust").

48. Id. subdiv. 2(e)(1) (counting a married couple as only one shareholder).

one class of shares, make at least 80% of its income from farming, and not control more than one thousand five hundred acres of farmland.[49]

Many of the ACF laws exempt corporate farms whose activity isn't commercial, such as "research or experimental" farms.[50] Corporations cannot use this provision to skirt the law: ACF laws often require an administrative review before corporations can claim this exception.[51] Other exceptions—for preferred industries—may include aquatic farms,[52] religious farms,[53] and breeding stock farms.[54]

Finally, some ACF laws exempt nonprofit corporations from their scope. For example, Minnesota's law allows nonprofits to own agricultural land if they do not use it for farming or lease it to another exempt farming operation.[55] The law does allow some active farming by nonprofit corporations, but it limits the amount of land that can be farmed and requires all profits be used for educational purposes.[56]

5. *Exempted Activities*. — ACF laws often allow entities to participate in activities that would otherwise be restricted, usually to prevent interfering with other commercial activity. These include owning land that is necessary for the corporation's purpose, such as when utility companies own land for their power transmission infrastructure[57] or property developers own land for development.[58] They may also allow restricted

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49. Id. subdiv. 2(e). Minnesota's ACF law also has an exception for an "[a]uthorized livestock farm corporation." See id. subdiv. 2(f) (internal quotation marks omitted) (requiring a higher threshold—75%—of owners to be farmers, with a majority of the shares held by individuals who operate the *specific* farm). As with family farms, Minnesota's law also allows "authorized" partnerships and LLCs. Id. subdiv. 2(k), (m).

50. See, e.g., id. subdiv. 2(p) (defining the term as farms that "own[] or operate[] agricultural land for research or experimental purposes" and whose commercial sales are "incidental to the . . . objectives" of the farm); id subdiv. 3 (creating the exemption).

51. In Minnesota, any corporation seeking to claim this exception must submit its proposed research objectives to the Commissioner of Agriculture. Id.

52. These are corporate farms that "cultur[e] private aquatic life in waters" that the "farmer has exclusive control of." Minn. Stat. § 17.47 subdiv. 3 (2024).

53. These are corporate farms "formed primarily for religious purposes" and "whose sole income is derived from agriculture." Minn. Stat. § 500.24 subdiv. 2(s).

54. These are farms that raise breeding stock—both plants and livestock—for sale to other farms for that use, rather than for commercial processing or consumption. Id. subdiv. 2(q).

States also exempt certain preferred farming activities. Missouri, in a notably precise exemption, exempts swine producers in very rural counties. See Mo. Ann. Stat. § 350.016–.017 (2024). Kansas also exempts swine and dairy farming, subject to each county's approval. Kan. Stat. Ann. §§ 17-5907 to -5908 (West 2025).

55. Minn. Stat. § 500.24 subdiv. 2(z).

56. See id. (limiting newly-acquired land holdings to only forty acres).

57. See, e.g., id. subdiv. 2(t) (defining these companies); id. subdiv. 3 (creating the exemption).

58. See, e.g., id. subdiv. 2(u) (requiring an active plan for development and restricting corporations from using land for agriculture pending the development).

entities to receive land through gifts, repossession, or debt collections.[59] These exemptions are not indefinite, though: Corporations are often required to sell or convert any such land within a defined period of time.[60]

6. *Effective Date*. — The period of effectiveness for ACF laws also varies. Some ACF laws have only prospective effect, exempting corporate landholdings acquired before the law's enactment.[61] Some laws also allow a corporation to expand its pre-existing holdings in a controlled manner.[62] Other states make their laws completely retroactive, requiring corporations to divest all holdings as soon as the law becomes effective (and the state brings an enforcement action).[63]

7. *Monitoring Systems*. — Many of the laws likewise have monitoring systems that allow the government to track potential violations. Kansas, for example, requires any corporation or partnership that holds agricultural land to file information including: the tracts of agricultural land owned or leased, the purposes for which the land is used, the date the land was acquired, the relative value of agricultural to non-agricultural land, and the number of shareholders.[64] Minnesota requires substantially the same information from its excepted entities, but also requires annual reporting.[65]

8. *Enforcement Actions*. — Finally, the enforcement actions allowed by ACF laws vary between the states. Most ACF laws allow the state's Attorney General to bring an action in a district court for violations.[66] Others extend

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59. See, e.g., id. subdiv. 2(w)–(x).

One issue on which states notably differ is whether corporations can maintain mineral rights on agricultural land. Compare Neb. Const. art. XII, § 8(I) (repealed 2006) (exempting mineral rights from the ACF law's restrictions), and Kan. Stat. Ann. § 17-5904(a)(13) (allowing coal mining corporations to farm land that has previously been strip-mined for coal), with N.D. Cent. Code § 10-06.01-03 (2024) (prohibiting restricted entities from retaining their mineral interests when they divest from agricultural land).

60. See, e.g., Minn. Stat. § 500.24 subdiv. 2(u) (requiring development corporations to complete their projects within six years of acquiring the land); id. subdiv. 2(w) (requiring gifted land to be sold within ten years); id. subdiv. 2(x) (requiring repossessed land to be sold within five years).

61. See, e.g., Kan. Stat. Ann § 17-5904(a)(7) (exempting land holdings that predate July 1, 1965).

62. See, e.g., Mo. Ann. Stat. § 350.015(3) (2024) (exempting land holdings that predate September 28, 1975, and allowing corporations to grow those holdings by up to 20% over a five-year period).

63. See, e.g., N.D. Cent. Code § 10-06.1-24 (providing no exemption for preexisting holdings). North Dakota does, however, give nonprofits a grace period to divest their holdings. Id. § 10-06.1-10. It also allows corporate farms the opportunity to convert their corporate charters as necessary to become one of the exempted farming corporations. Id. § 10-06.1-04.

64. Kan. Stat. Ann. § 17-7503(d).

65. Minn. Stat. § 500.24 subdiv. 4 (calling for filing with the Commissioner of Agriculture, rather than the Secretary of State).

66. E.g., S.D. Codified Laws § 47-9A-21 (2025).

this authority to local district attorneys,[67] and a few laws also allow private enforcement.[68] As a remedy for a violation, all states require divestment of the property by the corporate owner.[69] Some states also provide for civil penalties for failures to divest.[70]

C. *The Constitutionality of ACF Laws*

ACF laws have been challenged since their inception but have withstood most challenges. This section explores the three main types of challenges: those arising under the Equal Protection,[71] Due Process,[72] and dormant Commerce Clauses.[73] Of these, only dormant Commerce Clause challenges have found success.[74] Early challenges to the ACF laws were decided by the Supreme Court,[75] but the Court has not yet considered the dormant Commerce Clause question.[76]

1. *Equal Protection Clause.* — State ACF laws are presumptively valid under the Equal Protection Clause of the Constitution.[77] An early equal protection challenge was levied against North Dakota's ACF law in the 1940s.[78] The petitioner, Asbury Hospital, was a Minnesota corporation that had acquired land in North Dakota through mortgage foreclosure.[79] Under North Dakota's ACF law, Asbury Hospital had ten years to sell the land.[80] Because of the lingering effects of the Great Depression, though, Asbury Hospital doubted that it could recoup its investment.[81] So the

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67. E.g., Wis. Stat. & Ann. § 182.001(4) (2025).

68. E.g., N.D. Cent. Code § 10-06.1-25 (allowing any authorized corporation or resident to bring the action); Okla. Stat. tit. 18, § 956 (2024) (allowing *only* a resident of the county where the land is located to bring an action).

69. E.g., N.D. Cent. Code § 10-06.1-24(1)(c) (providing that, upon the judicial finding of a violation, a corporation "shall, within . . . one year from the date of the court's final order, divest itself of the farmland [held] . . . in violation of [the ACF law]").

70. E.g., Wis. Stat. & Ann. § 182.001(4) (providing for daily penalties of up to one thousand dollars).

71. See infra section I.C.1.

72. See infra section I.C.2.

73. See infra section I.C.3.

74. See infra section I.C.3.

75. See, e.g., Asbury Hosp. v. Cass County, 326 U.S. 207 (1945).

76. All the relevant cases have been within the Eighth Circuit. See Jones v. Gale, 470 F.3d 1261 (8th Cir. 2006); S.D. Farm Bureau, Inc. v. Hazeltine, 340 F.3d 583 (8th Cir. 2003); N.D. Farm Bureau, Inc. v. Stenehjem, 333 F. Supp. 3d 900 (D.N.D. 2018). This circuit concentration is not surprising: Six of the states that have enacted ACF laws (Iowa, Minnesota, Missouri, Nebraska, North Dakota, and South Dakota) are in the Eighth Circuit. See 28 U.S.C. § 41 (2018).

77. The Equal Protection Clause provides that "no State shall . . . deny to any person within its jurisdiction the equal protection of the laws." U.S. Const. art. XIV, § 1.

78. See *Asbury Hosp.*, 326 U.S. at 207.

79. Id. at 209–10.

80. Id.

81. Id. at 210.

hospital challenged the law, claiming that the law denied it equal protection of the laws as guaranteed by the Fourteenth Amendment.[82]

The Supreme Court disagreed. Chief Justice Harlan Fiske Stone, writing for the Court, recognized that "[t]he Fourteenth Amendment does not deny to the state power to exclude a foreign corporation from doing business or acquiring or holding property within it."[83] The Court also rejected the hospital's argument that, by allowing them to do business in the state, North Dakota could not later restrict the scope of this business.[84] "Subsequent legislation excluding such a corporation from continuing in the state has been sustained as an exercise of the general power to exclude foreign corporations," so North Dakota's law did not violate the Equal Protection Clause.[85]

The Court also upheld North Dakota's authorized farm exception under the Equal Protection Clause.[86] "The ultimate test of [a discriminatory statute's] validity," the Court reasoned, "is not whether the classes differ but whether the differences between them are pertinent to the subject with respect to which the classification is made," so long as "any state of facts could be conceived which would support it."[87] In applying its review, the Court recognized that restrictions on corporate activities are the types of social and economic policies that are within a permissible legislative purpose, even when those laws make distinctions between different classes of corporations—such as family corporations.[88]

Courts have continued to apply this equal protection rationale, though using more modern doctrinal terminology. Nebraska's ACF amendment was challenged on equal protection grounds six years after it was first enacted by popular referendum.[89] The Eighth Circuit, applying rational basis review, held that "[t]he people of Nebraska have made a reasonable judgment that prohibiting non-family corporate farming serves

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82. Id.

83. Id. at 211.

84. Id. The business in question being the ownership of farmland in North Dakota.

85. Id. at 211–12.

86. See id. at 214–15. (noting that the statute exempted "lands belonging to cooperative corporations, seventy-five percent of whose members or stockholders are farmers residing on farms, or depending principally on farming for their livelihood").

87. Id. (citing Carmichael v. S. Coal Co., 301 U.S. 495, 509 (1937); Metro. Cas. Co. v. Brownell, 294 U.S. 580, 583 (1935); Rast v. Van Deman & Lewis Co., 240 U. S. 342, 357 (1916)). This holding is consistent with modern-day "rational basis review." See, e.g., Fed. Commc'ns Comm'n v. Beach Commc'ns, Inc., 508 U.S. 307, 313 (1993) ("In areas of social and economic policy, a statutory classification that neither proceeds along suspect lines nor infringes fundamental constitutional rights must be upheld against equal protection challenge if there is any reasonably conceivable state of facts that could provide a rational basis for the classification.").

88. See *Asbury Hosp.*, 326 U.S. at 214–15.

89. See MSM Farms, Inc. v. Spire, 927 F.2d 330, 331 (8th Cir. 1991) (noting that the referendum occurred in 1982 and MSM brought suit in 1988).

the public interest in preserving an agriculture where families own and farm the land" and upheld the amendment.[90] Later cases have also recognized this principle.[91] From these cases, it seems settled that a state may both enact an ACF law and include exceptions for preferred entities without violating the Equal Protection Clause.

2. *Due Process Clause.* — Litigants often bundle due process challenges with their equal protection challenges to the ACF laws. By requiring sales of certain property without judicial process, ACF laws change the status quo of corporate landholders without notice or a hearing.[92]

Asbury Hospital v. Cass County involved just such a challenge.[93] Asbury Hospital argued that the economic downturn caused by the Great Depression prevented it from recouping its investment.[94] The Court disagreed, ruling that states' general power to restrict corporations' activities within their borders means they can also mandate transactions that those restrictions necessitate.[95] The Court also noted that "[t]he due process clause does not guarantee that a foreign corporation when lawfully excluded as such from ownership of land in the state shall recapture its cost."[96] Rather, the law must only "afford[] [the corporation] a fair opportunity to realize the value of the land," and "the sale, when required, [must] be under conditions reasonably calculated to realize [the land's] value at the time of sale."[97]

Later courts have looked favorably on this holding. In *MSM Farms, Inc. v. Spire*, the Eighth Circuit reasoned that, since MSM had acquired land after the Nebraska amendment was enacted, a court would be hard-pressed to find that MSM had not been "'afforded a fair opportunity to realize the value of the land' if divestiture is subsequently ordered."[98] And the most recent cases have declined to review this issue—instead focusing

90. Id. at 335. Nebraska's Amendment would later be struck down on dormant Commerce Clause grounds. See infra section I.C.3.

91. See, e.g., S.D. Farm Bureau, Inc. v. Hazeltine, 340 F.3d 583, 597 (8th Cir. 2003) ("We have previously concluded that promoting family farms is a legitimate state interest [in equal protection challenges] . . . .").

92. See, e.g., Kan. Stat. Ann. § 17-5904(a)(4) (West 2025) (requiring corporations that acquired land through debt settlement to sell it within ten years).

93. See 326 U.S. at 212–13.

94. Id. at 210.

95. Id. at 212.

96. Id.

97. Id. at 212–13.

98. 927 F.2d 330, 335 (8th Cir. 1991) (quoting *Asbury Hosp.*, 326 U.S. at 212). The plaintiffs had not raised the argument at trial, so the court declined to consider it on appeal. This dictum nonetheless suggests the durability of this interpretation of the Due Process Clause. See id. at 334.

on the dormant Commerce Clause[99]—likewise suggesting that *Asbury Hospital*'s due process rationale is here to stay.

3. *Dormant Commerce Clause.* — The final—and only successful—grounds on which ACF laws have been challenged is the dormant Commerce Clause.[100] Before exploring these cases and their holdings, it is useful to review the basic structure of the dormant Commerce Clause and challenges to it.

a. *The Dormant Commerce Clause Explained.* — The U.S. Constitution provides that "Congress shall have Power . . . [t]o regulate Commerce . . . among the several States."[101] Under current doctrine, this "serves as an affirmative grant of authority to Congress to regulate interstate commerce, and . . . has a 'dormant' or 'negative' component that prohibits the states from impairing interstate commerce."[102] The doctrine has shifted from asking whether a state's regulation affects interstate commerce to whether a state law treats in-state entities and out-of-state entities differently.[103]

In its modern application, the dormant Commerce Clause has a two-step mode of analysis. The court first identifies whether a law discriminates against out-of-state entities—either on its face, in its effect, or in its purpose.[104] If such discrimination is found, the law is presumptively invalid.[105] The only way a state may overcome this presumption is to "show, under rigorous scrutiny, that it has no other means to advance the legitimate state interest."[106]

But even a nondiscriminatory statute does not automatically pass constitutional muster. Under the balancing test set out in *Pike v. Bruce Church, Inc.*, a nondiscriminatory law is nevertheless invalid if "the burden

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99. See infra section I.C.3.

100. E.g., Jones v. Gale, 470 F.3d 1261 (8th Cir. 2006); S.D. Farm Bureau, Inc. v. Hazeltine, 340 F.3d 583 (8th Cir. 2003); N.D. Farm Bureau, Inc. v. Stenehjem 333 F. Supp. 3d 900 (D.N.D. 2018).

101. U.S. Const. art. I, § 8, cl. 3.

102. Dawinder Sidhu, Interstate Commerce x Due Process, 106 Iowa L. Rev. 1801, 1805 (2021).

103. Compare Gibbons v. Ogden, 22 U.S. (9 Wheat.) 1, 239–40 (1824) (striking down a New York law that sought to regulate instrumentalities of interstate commerce), with City of Philadelphia v. New Jersey, 437 U.S. 617, 629 (1978) (striking down a New Jersey law that prohibited importation of waste from out-of-state waste haulers).

104. See Sidhu, supra note 102, at 1808; see also *N.D. Farm Bureau*, 333 F. Supp. 3d at 915.

105. See Sidhu, supra note 102, at 1808.

106. *N.D. Farm Bureau*, 333 F. Supp. 3d at 915 (citing Jones v. Gale, 470 F. 3d 1261, 1270 (8th Cir. 2006); S.D. Farm Bureau, Inc. v. Hazeltine, 340 F.3d 583, 593 (8th Cir. 2003)); see also Sidhu, supra note 102, at 1808 ("The state may overcome this presumption by showing . . . : first, the statute's ends are legitimate . . . ; second, the source of the problem is out-of-state; and third, no non-discriminatory alternatives were viable . . . ."). This rarely includes economic protectionism. See *City of Philadelphia*, 437 U.S. at 624 ("[W]here simple economic protectionism is effected by state legislation, a virtually *per se* rule of invalidity has been erected.").

imposed on such commerce is clearly excessive in relation to the putative local benefits."[107]

b. *Application to South Dakota.* — In 1998, South Dakota codified its ACF law into the state constitution by public referendum.[108] This "Amendment E" prohibited "corporations and syndicates" from acquiring farmland.[109] As with many of the ACF laws, though, South Dakota's provided for a family farm exception.[110] This exception required at least one of the family members to "reside on or be actively engaged in the day-to-day labor and management of the farm."[111]

In *South Dakota Farm Bureau, Inc. v. Hazeltine*, a group of plaintiffs argued that this exception violated the dormant Commerce Clause by discriminating against interstate commerce.[112] The Eighth Circuit agreed, finding a discriminatory purpose behind Amendment E.[113] The court first reviewed statements in favor of the amendment, which said that Amendment E would prevent "[d]esperately needed profits [from] be[ing] skimmed out of local economies and into the pockets of distant corporations."[114]

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107. 397 U.S. 137, 142 (1970). Invalidated laws include "statutes requiring business operations to be performed in the home State that could more efficiently be performed elsewhere." See id. at 145 (collecting cases).

Pike's doctrine has been hotly debated in recent years. See Nat'l Pork Producers Council v. Ross, 143 S. Ct. 1142, 1158 (2023) (reading *Pike* and its progeny as a mere "practical effects" test to ""smoke" out a hidden' protectionism" (quoting Richard Fallon, The Dynamic Constitution 311 (2d. ed. 2013))); id. at 1159–61 (plurality opinion) (Gorsuch, J.) (rejecting the Court's competence to apply *Pike* balancing when the perceived benefits—upholding public values regarding animal protection—are "noneconomic"); id. at 1165–66 (Sotomayor, J., concurring in part, joined by Kagan, J.) (arguing that courts can, and often do, weigh benefits and burdens of different types and affirming the judgment for insufficiently pleading a burden that would outweigh the benefits under *Pike*); id. at 1168–72 (Roberts, C.J., concurring in part and dissenting in part, joined by Alito, Kavanaugh & Jackson, JJ.) (arguing that *Pike* can weigh economic and noneconomic effects and requires consideration of both "compliance costs" and other "economic harms to the interstate market" (citing Bibb v. Navajo Freight Lines, Inc., 359 U.S. 520 (1959))).

108. See *Hazeltine*, 340 F.3d at 587.

109. Id.

110. See supra section I.B.4–.5.

111. *Hazeltine*, 340 F.3d at 588 (quoting S.D. Const. art. XVII, § 22, cl. 1). The challenged section further provided that "[d]ay-to-day labor and management shall require both daily or routine substantial physical exertion and administration." Id. (quoting S.D. Const. art. XVII, § 22, cl. 1).

112. See id. at 592.

113. See id. at 596.

114. See id. at 594 (first alteration in original) (internal quotation marks omitted) (quoting Charlie Johnson & Dennis Wiese, Pro—Constitutional Amendment E, 1998 Ballot Question Pamphlet, https://sdsos.gov/elections-voting/election-resources/election-history/1998/1998_amendment_e.aspx [https://perma.cc/T24A-L3Y5] (last visited Oct. 16, 2024)) (describing the statement as "brimming with protectionist rhetoric" (internal quotation marks omitted) (quoting SDDS, Inc. v. South Dakota, 47 F.3d 263, 268 (8th Cir. 1995))).

The court also looked at the drafting history of the amendment, finding that some drafters wanted to stop out-of-state hog producers from building facilities in South Dakota.[115] This history also included indirect evidence of discrimination: The drafters did not show how the amendment furthered the proffered state interests of preserving family farms and protecting the environment,[116] nor did they estimate how well the amendment furthered those interests.[117] This all convinced the court that Amendment E had a discriminatory purpose.[118]

Finding discriminatory purpose, the Eighth Circuit next considered whether the state had shown that no reasonable nondiscriminatory alternatives existed to carry out its interests.[119] In finding that the state failed to meet its burden, the court highlighted the state's failure to consider *any* alternative solutions in drafting Amendment E.[120] Because the state had not considered any alternatives, it could not show that no nondiscriminatory alternatives existed.[121]

The Supreme Court denied certiorari on the case, rendering this decision final.[122]

c. *Application to Nebraska.* — The second ACF law challenged under the dormant Commerce Clause was Nebraska's constitutional amendment.[123] Several farmers brought suit, challenging the family farm exception's requirement that at least one family member live or work on the farm.[124] The Eighth Circuit here found facial discrimination against interstate commerce.[125] The panel decided that the amendment "on its face . . . favors Nebraska residents, and people who are in such close proximity to Nebraska farms and ranches that a daily commute is physically and economically feasible for them."[126] In its decision, the

115. See id. at 594–95.

116. Id. at 594.

117. See id. at 595 ("[T]he evidence in the record demonstrates that the drafters made little effort to measure the probable effects of Amendment E and of less drastic alternatives.").

118. See id. at 596.

119. See id. at 597.

120. Id.

121. Id. at 597–98. The court identified several alternatives from a report prepared by the USDA but did not pass on their merits since the state had not met its burden of identifying these alternatives. See id.

122. See Dakota Rural Action v. S.D. Farm Bureau, 541 U.S. 1037 (2004) (mem.), denying cert. to *Hazeltine*, 340 F.3d 583. Notably, however, the Eighth Circuit's opinion did not invalidate the underlying statute, which provides the same restrictions on corporate farms and is still in effect. See S.D. Codified Laws § 47-9A (2025).

123. See Jones v. Gale, 470 F.3d 1261 (8th Cir. 2006).

124. Id. at 1264.

125. Id. at 1268.

126. Id. at 1267–68 (internal quotation marks omitted) (quoting Jones v. Gale, 405 F. Supp. 2d 1066, 1081 (D. Neb. 2005)).

Eighth Circuit expressly rejected the state's argument that this language was broad enough to apply to individuals who lived or worked on out-of-state farmland that was also owned by the in-state family farm corporation.[127]

The court also found a discriminatory intent behind the amendment.[128] The court summarily considered the factors from *Hazeltine* and analyzed the ballot initiative's title, which said the challenged exception applied to "Nebraska family farm corporation[s]."[129] This language helped convince the court that the amendment intended to favor Nebraska corporations over out-of-state corporations.[130] And the court again found that the state did not prove that it had no other nondiscriminatory means to advance its interests.[131]

d. *Application to North Dakota.* — A final—and recent—challenge to ACF laws on dormant Commerce Clause grounds came in 2018 in North Dakota.[132] Again at issue was the validity of a family farm exception.[133] The district court found that the statute's reference to "domestic" family farm corporations was facially discriminatory and necessarily gave it discriminatory effect, but North Dakota's long history of ACF laws undermined any claim of discriminatory intent.[134] Likewise, the court found that the requirement that at least one family member must be "actively engaged in operating the farm or ranch" was not a geographic requirement, in contrast to Nebraska's "day-to-day labor" provision, so this

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127. See id. ("[The state] assert[s] that a Colorado family farm corporation, for example, could operate on land in Nebraska as long as its majority shareholder or one of his or her family members lived or worked at the location of the corporation's Colorado farm. This argument is meritless."). The court participated in a lengthy statutory interpretation exercise to support its finding that a discriminatory interpretation was the "most natural and obvious meaning." See id.

For a general discussion of the differing interpretations of "the farm" in the ACF law context and their application in *Jones*, see generally Anthony B. Schutz, Corporate-Farming Measures in a Post-*Jones* World, 14 Drake J. Agric. L. 97, 116–23 (2009).

128. See *Jones*, 470 F.3d at 1268–69.

129. Id. at 1269–70 (internal quotation marks omitted). The court's review was based on Nebraska's ballot initiative law, which requires the title to state the amendment's purpose. See id. (citing Neb. Rev. Stat. § 32-1410(1) (2006)).

130. See id.

131. Id. at 1270. The court did not deny that the amendment's purpose—to remedy the threat of "absentee owners of land, negative effects on the social and economic culture of rural Nebraska, and a lack of good stewardship of the state's . . . natural resources"—was legitimate. Id. But it recognized that there could be nondiscriminatory ways to counter those threats that the state hadn't precluded. See id. ("Were the state interests more clearly defined, we would be able to discern whether specific regulations could address the particular difficulties that frustrate the promotion of those interests.").

132. See N.D. Farm Bureau, Inc. v. Stenehjem, 333 F. Supp. 3d 900 (D.N.D. 2018).

133. Id. at 906.

134. Id. at 915–17, 922–25 ("The Commerce Clause does not guarantee access to the corporate form." (citing State v. J.P. Lamb Land Co., 401 N.W.2d 713, 717 (N.D. 1987)).

provision of the statute was not facially discriminatory.[135] The state conceded the rigorous scrutiny test, so the court invalidated the family farm exception.[136]

4. *Conclusion*. — Before moving on, it is worth briefly synthesizing the preceding discussion into a concise statement of ACF laws' constitutionality and discussing the risks that state legislators might avoid in drafting corporate restrictions. ACF laws are presumptively constitutional. The Equal Protection Clause allows state laws to treat individuals and corporations differently, as long they are rationally linked to a legitimate state interest.[137] The Due Process Clause likewise only requires that corporations have a reasonable opportunity to sell their land in a manner that allows them to realize its fair value.[138] The dormant Commerce Clause provides the only roadblock for ACF laws.[139] ACF laws have run afoul of dormant Commerce Clause review on all three grounds: facial discrimination, discriminatory purpose, and discriminatory effect.

Careful drafting can avoid these pitfalls. Legislators can avoid a finding of facial discrimination and discriminatory effect by ensuring that any exceptions do not contain geographic components.[140] Likewise, they should take care that the purpose of their ACF laws is based in legitimate state interests—such as rural values, land stewardship, or the environment—and not merely economic protectionism.[141]

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135. Id. at 917–22.

136. Id. at 925. The court found that the family farm exception was severable from the rest of the ACF law, and therefore only enjoined the exception from being applied to domestic corporations. Id. at 925–27. North Dakota subsequently amended its law, eliminating any reference to "domestic" family farming corporations. See S.B. 2210, 67th Leg. Assemb., 2021 N.D. Laws 327, 328–29 (codified at N.D. Cent. Code § 10-06.1-12 (2024)).

137. See supra section I.C.1.

138. See supra section I.C.2.

139. See supra section I.C.3.

140. See *N.D. Farm Bureau*, 333 F. Supp. 3d at 917–22 (differentiating between "day-to-day labor" and active engagement in holding that the latter required no geographic link); Schutz, supra note 127, at 123–34 ("States have at least two options for modifying their corporate-farming restrictions: (1) remove all qualifying-activities criteria and focus on income testing and size restrictions or (2) ensure that their qualifying activities have no geographic implications relative to the state's border.").

141. See Schutz, supra note 127, at 140 ("[T]he advice to states is simple: be careful of the record created. States must avoid the imprimatur of hostility toward outsiders." (footnote omitted)).

D. *Criticisms of ACF Laws*

ACF laws have been criticized for their ineffectiveness in achieving their policy goals. This section reviews some of these criticisms[142] in order to later evaluate them within the Corporate Landlord context.[143]

1. *Structural Criticisms.* — One criticism of ACF laws addresses the gaps that many of them have in their scope, which allow corporations to exercise control over farming operations. ACF laws generally only restrict land ownership and operation of a farm.[144] They often do not limit corporations further up the supply chain from effectively controlling a farm by contracting with individual producers to provide the necessary raw materials and purchase their output.[145] These "production contracts" reduce the risk for the individual producers, but they also take away many of the benefits of independent farming.[146] Farmers lose the power to make independent decisions and pledge their livestock or crops as security for loans.[147] And the disparity in economic interests between the farmer and the corporation has been likened to modern-day serfdom.[148] Similarly, some ACF laws allow family-owned corporations to rent out their farmland rather than farming it themselves. In Iowa, this has led to thirty-four percent of farmland being farmed by nonowners.[149]

Other criticisms target inconsistencies within the ACF laws, especially those that have been amended piecemeal over the years.[150] Critics argue

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142. This section does not seek to be a comprehensive survey of the policy debate surrounding ACF laws. Rather, it serves as a primer on the post-enactment impacts of these laws.

143. See infra section III.A.2.

144. See supra section I.B.2–.3.

145. See, e.g., Kan. Stat. Ann. § 17-5904(b) (West 2025) (exempting such contracts). In these production contracts, "the [individual] feedlot owner will furnish facilities and labor in exchange for payment by the [corporate] livestock owner for the livestock's care and feeding. Such payment is usually made after care and feeding is rendered." Keith D. Haroldson, Two Issues in Corporate Agriculture: Anticorporate Farming Statutes and Production Contracts, 41 Drake L. Rev. 393, 413 (1992).

146. See Haroldson, supra note 145, at 413–14 ("The producer entering a production contract may gain a person or entity with whom risk may be shared, but forfeits two important characteristics of entrepreneurship—ownership and control.").

147. Id.

148. Id. at 414.

149. Pérez, supra note 15, at 60–61. Pérez argues that this indirect consolidation of land has undermined Iowa's ACF law. See id. Pérez's criticism does not identify whether the nonowner farmers are corporations or individuals. See id. But since Iowa's ACF law limits corporations from even leasing farmland, see Iowa Code § 9H.4(1) (2024), it is likely the latter.

150. See, e.g., Richard F. Prim, Saving the Family Farm: Is Minnesota's Anti-Corporate Farm Statute the Answer?, 14 Hamline J. Pub. L. & Pol'y 203, 216 (1993) ("After nearly thirty amendments, as well as its numerous exceptions, the statute is extremely inconsistent, confusing, and complicated.").

that inconsistent statutory text creates conflicting obligations[151] and muddies the scope of these laws.[152]

2. *Outcome-Based Criticisms.* — Different criticisms focus on the effect of the laws. Critics suggest that ACF laws create barriers to entry for new farmers: Where land costs are too high for a sole farmer to purchase, ACF laws prevent groups of farmers from using the corporate form to pool their resources.[153] Others argue that ACF laws are ineffective because their policy goals are really to support small family farms, yet the ACF laws generally don't limit the size of farms that can qualify for the family farm exceptions.[154] Critics also argue that the benefits of the corporate form—for retirement planning, inter vivos transfers, and estate planning—outweigh any social costs.[155]

In livestock contexts, critics often suggest that ACF laws overlook the connected and global nature of modern farming:[156] Gone are the days when Minnesota's farmers would be selling their products only within Minnesota.[157] These criticisms often rely on empirical data to support their claims. Minnesota reportedly lost half of its beef production market share and nearly all of its beef packing market share in the first twenty years after enactment of its ACF law.[158] Similar effects have been noted in other states.[159] This trend, critics argue, indicates that ACF laws do not protect

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151. See id. (describing contradictory language that suggests that family farm corporations are *both* exempt from the state's annual reporting requirement *and* required to file annual reports).

152. See id. at 218 (noting that Minnesota defines "agricultural land" as both "land used for farming" and land "capable of being used for farming" (internal quotation marks omitted)).

153. Id. at 220. Prim fails to consider that most ACF laws allow small corporations to own farmland and generally do not restrict collective ownership through unlimited liability entities, such as general partnerships. See supra section I.B.4.

154. See, e.g., Matthew M. Harbur, Anti-Corporate, Agricultural Cooperative Laws and the Family Farm, 4 Drake J. Agric. L. 385, 392 (1999).

155. Id. at 393 (arguing that "[s]tates should consider regulating undesirable aspects of corporations, rather than abolishing those corporations altogether").

156. See Prim, supra note 150, at 220–221.

157. Cf. id. ("Minnesota farmers must deliver to and sell their products in the same markets as the restriction free states and countries such as Canada.").

Notably, this interconnected nature of the modern agricultural economy animated the debate between the justices in *National Pork Producers Council v. Ross*. See supra note 107 for more discussion.

158. See Prim, supra note 150, at 221. Prim also notes, however, that Minnesota's poultry industry, which is exempt from the ACF law, remained healthy over the same period, while the pork industry's future in the state was "uncertain." See id.

159. See Matt Chester, Note, Anticorporate Farming Legislation: Constitutionality and Economic Policy, 9 Drake J. Agric. L. 79, 87–88 (2004) (comparing a decline in livestock market share for Nebraska, South Dakota, and Wisconsin after ACF law enactment to a significant rise in market share for Colorado and North Carolina, states without ACF laws).

family farms and domestic farming; rather, they merely shift patterns of corporate investment to states without ACF laws.[160]

A third outcome-based criticism appeals to economic optimization. Put simply, "large corporate farms dominate the marketplace . . . by producing a higher volume[] and . . . reducing their unit costs through lower raw material costs."[161] Thus, ACF laws undermine market efficiency, which raises prices for consumers. But these arguments overlook the purpose of the statutes. ACF laws were not enacted to ensure low-cost food production. Rather, legislators felt that "the family farm . . . [is] the most socially desirable mode of agricultural production" and is vital to the "stability and well-being of rural society."[162] There is one relevant economic criticism, though: The ACF laws have apparently corresponded with a "dramatic increase" in farmland prices in most of the states with ACF laws.[163] While this increase in land prices benefits current owners, the increase can also "lock in" farmers, because the corporate farms that could afford to buy land at the increased prices are legally prohibited from doing so.[164]

II. THE FINANCIALIZATION OF HOUSING

This Part introduces the problem of the "financialization" of housing,[165] and the related rise of Corporate Landlords. It begins by exploring the origins of financialization in the Great Recession, when the collapse of housing prices and favorable government policies made housing attractive to institutional investors.[166] It then turns to the impacts of financialization: Institutional investors became absentee landlords who rented out homes to individuals and families. In search of profit, they drove up costs, slashed basic services, decreased quality of life, and reduced rates of home ownership.[167] Then, at the height of the COVID-19 pandemic, they engaged in predatory practices to eliminate existing tenants, in contravention of federal, state, and local eviction moratoria.[168]

160. See, e.g., id. at 87–88, 96.

161. Prim, supra note 150, at 221 (citing A.V. Krebs, The Corporate Reapers: The Book of Agribusiness 76 (1991)).

162. See Minn. Stat. § 500.24 subdiv. 1 (2024).

163. Chester, supra note 159, at 96–97.

164. See supra note 153 and accompanying text.

165. Financialization of housing has been defined as the process by which "massive amounts of global capital have been invested in housing as a commodity, as security for financial instruments that are traded on global markets, and as a means of accumulating wealth." Leilani Farha (Special Rapporteur on Adequate Housing), Report of the Special Rapporteur on Adequate Housing as a Component of the Right to an Adequate Standard of Living, and on the Right to Non-Discrimination in This Context 1, U.N. Doc. A/HRC/34/51 (Jan. 18, 2017) [hereinafter U.N., Adequate Housing].

166. See infra section II.A.

167. See infra section II.B.1.

168. See infra section II.B.2.

Finally, this Part reviews the various policy proposals to remedy this problem and discusses their shortcomings.[169]

A. *The History of Financialization*

In the wake of the 2008 financial crisis, the housing market was turned on its head.[170] Between foreclosures and short sales, some 5.7 million homeowners lost their houses.[171] The housing market collapsed.[172] Institutional investors—hedge funds, private equity firms, and other money managers—saw an opportunity to buy houses at a steep discount, have renters cover the mortgages, and hold them until they could realize the capital gains.[173] Whereas previous investment strategies had focused on multi-unit housing,[174] after the financial crisis, at least twenty-five institutional investors made investments in single-family real estate, together totaling $60 billion.[175] The largest of these investors—Invitation Homes, which began as a Blackstone subsidiary—reportedly owned 82,500 homes at its peak.[176] And Corporate Landlords have not been idle—the period since 2011 has been marked with home sales, mergers, and acquisitions as the new SFR market has consolidated.[177] As recently as the fourth quarter of 2023, investors bought 28% of all single-family homes sold.[178]

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169. See infra section II.C.

170. For a contemporary discussion of the history and causes of the financial crisis, see generally Eamonn K. Moran, Wall Street Meets Main Street: Understanding the Financial Crisis, 13 N.C. Banking Inst. 5 (2009).

171. See Francesca Mari, A $60 Billion Housing Grab by Wall Street, N.Y. Times Mag. (Mar. 4, 2020) https://www.nytimes.com/2020/03/04/magazine/wall-street-landlords.html (on file with the *Columbia Law Review*) (last updated Oct. 22, 2021) ("From 2007 to 2011, 4.7 million households lost homes to foreclosure, and a million more to short sale.").

172. Id.

173. See id.

174. Cf. id. ("Before 2010, institutional landlords didn't exist in the single-family-rental market . . . .").

175. See id. (noting that this "real estate grab" has "fuel[ed] a housing recovery without a homeowner recovery").

176. Id.

177. In one notable example, a man named Chad Ellingwood, whose foreclosure in the housing crisis led him to rent his former home from a Corporate Landlord, reportedly had four different landlords in an eight-year period, each with different policies and lease terms. See id.

178. Thomas Malone, US Home Investor Share Reached New High in Q4 2023, CoreLogic (Apr. 9, 2024), https://www.corelogic.com/intelligence/us-home-investor-share-reached-new-high-q4-2023/ [https://perma.cc/VS4V-ZQQ7]. For broader discussion of this trend, see Jessica A. Shoemaker, Re-Placing Property, 91 U. Chi. L. Rev. 811, 850 (2024) (describing the current trend of single-family home sales to "landlords, aspiring Airbnb tycoons, and other types of investors" (internal quotation marks omitted) (quoting Amanda Mull, The HGTV-ification of America, The Atlantic (Aug. 19, 2022),

These investment strategies were supported by market forces. Former homeowners still needed housing, so rental demand was high.[179] Meanwhile, the accompanying stock market crash and the interest rate cuts by the Federal Reserve made these alternative investments more appealing to investors, who happily gave money to these burgeoning Corporate Landlords.[180]

Corporate investments in SFR have been geographically distributed throughout the country. Atlanta,[181] Boston,[182] Charlotte,[183] Houston,[184] Indianapolis,[185] Los Angeles,[186] Minneapolis[187] New York,[188] San

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https://www.theatlantic.com/technology/archive/2022/08/hgtv-flipping-houses-cheap-redesign/671187/ (on file with the *Columbia Law Review*))).

179. See Desiree Fields & Manon Vergerio, Corporate Landlords and Market Power: What Does the Single-Family Rental Boom Mean for Our Housing Future? 11 (2022), https://escholarship.org/uc/item/07d6445s [https://perma.cc/GSH8-H92U] (describing the "surging rental demand and constrained mortgage credit" that "assured both customers . . . and little competition from other buyers" in the wake of the housing crash (footnote omitted)).

180. See id. ("This market turn benefited alternative investment funds . . . by giving them access to capital they could deploy to acquire distressed real estate.").

181. See Mari, supra note 171 (noting that institutional investors own 8.4% of single-family rental homes in Atlanta).

182. See Sarah Rosenkrantz, Harvard and the Housing Crisis: The Non-Profit Corporate Landlord Behind Boston's Housing Crisis, The Flaw (Nov. 21, 2022), https://theflaw.org/articles/harvard-and-the-housing-crisis-the-non-profit-corporate-landlord-behind-bostons-housing-crisis/ [https://perma.cc/X953-G2SJ] (noting that, as of 2020, Corporate Landlords owned 32% of rental units in Boston, though not distinguishing between single- and multi-family housing).

183. See Mari, supra note 171 (noting that institutional investors own 11.3% of single-family rental homes in Charlotte).

184. See Danielle A. Koelling, Financialization of Housing in the Single-Family Rental and Build-to-Rent Markets, a Houston Case Study 28–69 (Feb. 20, 2023) (Master Thesis, Vienna University of Economics and Business) (on file with the *Columbia Law Review*) (studying the motivations, mechanisms, and strategies underlying the rising trend of institutional investment in SFR and build-to-rent housing in metropolitan Houston).

185. See IU McKinney Health & Human Rights Clinic, Cassidy Segura Clouse, Katie Whitley, Samantha Kannmacher & Emily Tyner, Reaffirming Housing as Infrastructure in Indiana, 55 Ind. L. Rev. 767, 770 (2022) ("In Indianapolis, 19% of residential, single-family homes are owned by institutional investors, the highest rate of all tracked markets.").

186. See Mari, supra note 171 (describing the rise of Corporate Landlords in Los Angeles).

187. See Roshan Abraham, Minneapolis Tenants Are Taking on Corporate Landlords by Putting Their Rent in Escrow, Next City (June 23, 2022), https://nextcity.org/urbanist-news/minneapolis-tenants-are-taking-on-corporate-landlords-by-putting-their-rent (on file with the *Columbia Law Review*) (describing a wave of anti-landlord activism in Minneapolis and St. Paul, where investors own 4.1% of single-family rental homes).

188. See Sateesh Nori, Opinion, Corporate Landlords Are Taking Over NYC—The Numbers Don't Lie, City Limits (May 31, 2022), https://citylimits.org/2022/05/31/opinion-corporate-landlords-are-taking-over-nyc-the-numbers-dont-lie/ [https://perma.cc/BH4Y-S9AY] (discussing how "corporate acquisitions overtook individual purchases [of residential property] shortly after the 2008 economic recession" and how

Antonio,[189] and Tampa[190] have all received attention for their significant growth of corporate-owned rentals. But Corporate Landlords do not buy just any houses that come on the market. They focus on a "strike zone" of cheap housing in areas of high rental demand, often isolating specific neighborhoods within a city.[191] Once targets are identified, they swoop in, "outcompeting would-be owner occupiers with all-cash, no-contingency offers and effectively gatekeeping access to particular neighborhoods and public schools."[192] These investments continue today. In September 2023, Arrived, a platform that allows individuals to own fractional shares in SFR housing, announced a new "Single Family Residential Fund," offering retail investors "an even more passive way to build a diverse real estate portfolio."[193]

The free market did not act alone in creating this trend; federal government policy during the Great Recession encouraged corporate SFR investment. Fannie Mae and Freddie Mac—government-sponsored entities that were created to expand access to affordable housing by securitizing mortgage portfolios from lenders[194]—auctioned off more than 95% of their distressed mortgage portfolios to institutional investors.[195] These sales were intended to create a bottom for an otherwise

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"since 2011, corporate landlords have remained the primary type of residential real estate transaction"); Angela Stovall, The Corporatization of NYC Real Estate, Medium (May 25, 2022), https://medium.com/justfixorg/corporatization-of-nyc-real-estate-83e2bf191b73 [https://perma.cc/YK3S-FPLV] (noting that "89% of all units registered with the [NYC] Department of Housing Preservation and Development . . . list a corporate owner").

189. See Luis Escalante, Corporate Landlord Activity in The Housing Market: An Exploratory Analysis of San Antonio, TX 1, 22 (May 2023) (M.S. thesis, University of Texas at San Antonio) (on file with the *Columbia Law Review*) (discussing how Corporate Landlords in Bexar County increased their ownership of single-family residential property by 42.4% between 2021 and 2022).

190. See Mari, supra note 171 (noting that institutional investors own 9.6% of single-family-rental homes in Tampa).

191. Mari, supra note 171. For example, this strike zone could focus on neighborhoods with mid-sized, single family homes valued at the median local price. See Fields & Vergerio, supra note 179, at 22.

192. Fields & Vergario, supra note 179, at 22.

193. Arrived Single Family Residential Fund, Arrived (Aug. 29, 2024) https://arrived.com/blog/arrived-single-family-residential-fund/ [https://perma.cc/AY56-GK9K]; see also Arrived SFR Genesis Fund, LLC, Offering Circular (Form 253G2) (Sept. 25, 2023). As of October 2024, the fund has raised more than $17 million from investors. Single Family Residential Fund, Arrived, https://arrived.com/properties/the-single-family-residential-fund [https://perma.cc/T84Q-RSUC] (last visited Oct. 18, 2024).

194. Affordable Homeownership, Fannie Mae, https://singlefamily.fanniemae.com/originating-underwriting/affordable [https://perma.cc/AY56-GK9K] (last visited Oct. 18, 2024); About Us, Freddie Mac, https://www.freddiemac.com/about?nav=overview [https://perma.cc/H9BX-RYVC] (last visited Oct. 18, 2024).

195. Mari, supra note 171.

collapsing housing market,[196] and assets were sold to the highest bidders.[197] In doing so, they did not consider the needs of the people who lived in these houses.[198] And this Corporate-Landlord-friendly policy has continued. As recently as 2017, Fannie Mae guaranteed a $1 billion loan to Invitation Homes.[199]

B. *The Costs of Financialization*

1. *The Economic Costs of Financialization.* — Financialization of housing has economic costs for renters. Research suggests that corporate-owned rentals tend to have above-market rent increases.[200] This is because Corporate Landlords target areas of high job growth and limited housing—where tenants must be price takers and have few alternatives.[201] One report, reviewing revenue growth strategies of the three largest Corporate Landlords, described double-digit quarterly rent increases throughout 2021,[202] as landlords sought to "find the 'sweet spot'—namely,

196. See id. ("Rather than protecting communities and making it easy for homeowners to restructure bad mortgages or repair their credit after succumbing to predatory loans, the government facilitated the transfer of wealth from people to private-equity firms.").

197. See id. ("Fannie Mae and Freddie Mac's books were auctioned off to Wall Street investors without any meaningful stipulations . . . .").

198. See ACCE Inst., Ams. for Fin. Reform & Pub. Advocs., Wall Street Landlords Turn American Dream Into a Nightmare 16 (2018), https://assets.nationbuilder.com/acceinstitute/pages/1153/attachments/original/1570049936/WallstreetLandlordsFinalReport.pdf [https://perma.cc/6V7M-N8S7] (explaining how Wall Street investors target neighborhoods where they can set high rents, impose high rent increases, and outcompete individual purchasers in the market).

199. Mari, supra note 171 (noting that this was the first SFR loan guaranteed by any government-backed organization and that it was collateralized by over seven thousand rental homes); see also ACCE Inst. et al., supra note 198, at 37 ("This federal backing allowed Invitation Homes to benefit from lower interest rates and more favorable loan terms than the single-family rental industry had ever received before, and appears to have been a result of sustained industry lobbying.").

200. See Carlos Waters, Wall Street Has Purchased Hundreds of Thousands of Single-Family Homes Since the Great Recession. Here's What That Means for Rental Prices, CNBC (Feb. 21, 2023) https://www.cnbc.com/2023/02/21/how-wall-street-bought-single-family-homes-and-put-them-up-for-rent.html [https://perma.cc/67LQ-6R3R] (last updated Feb. 22, 2023) ("Between January 2020 and January 2023, rents for a two-bed detached home increased about 44% in Tampa, Florida, 43% in Phoenix, and 35% near Atlanta. That's compared with a 24% increase nationwide."); see also ACCE Inst. et al., supra note 198, at 18 (noting that Wall Street landlords charge nearly double the national average in some markets).

201. See ACCE Inst. et al., supra note 198, at 16–17 (explaining that targeting neighborhoods with these characteristics makes it easier for Corporate Landlords "to set high rents and to impose high rent increases over time").

202. See Fields & Vergerio, supra note 179, at 32–35 (reporting that, in the third quarter of 2021, Tricon Residential raised rent on new leases by 19.1% and by 5.7% on lease renewals).

how much they can increase rents until it becomes more cost effective for tenants to go out and buy their own place."[203]

Additionally, Corporate Landlords crowd out other would-be homeowners, as their cash offers are often more attractive to sellers than individual buyers, whose mortgage-based financing may fall through before closing.[204] This crowding-out has downstream effects. Home values have largely recovered since 2011,[205] but corporate ownership of housing means that these gains have accrued to the benefit of corporations and shareholders, rather than the individuals who otherwise would have owned these homes.[206]

Increased rents are not the only cost Corporate Landlords place upon their tenants. Corporate Landlords make varied efforts to maximize their investment returns. These include charging for late payments, "smart home" features—which tenants may not want or even use—and "chargebacks" for utilities paid by the landlords.[207] Corporate Landlords also shift maintenance costs back to tenants and charge a fee for that "service," too.[208] These tactics have largely worked. Corporate Landlords reaped massive revenue and profit growth in 2022 as compared to 2021.[209]

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203. Id. at 35.

204. ACCE Inst. et al., supra note 198, at 9–10.

205. By spring 2020, median home prices had reportedly recovered by 46% relative to their 2011 low point. Mari, supra note 171.

206. See id. (describing how Blackstone profited off the rebounding housing market by selling its shares in Invitation Homes for $ 7 billion). For a cross-doctrinal discussion of how American law favors homeownership and how these increased rates of tenancy reinforce racial disparities, see generally Sarah Schindler & Kellen Zale, The Anti-Tenancy Doctrine, 171 U. Pa. L. Rev. 267 (2023) ("[B]ecause the majority of Black and Latinx families are renters, they are disproportionately impacted by policies that disfavor renters.").

207. See ACCE Inst. et al., supra note 198, at 23 (summarizing a "broader industry strategy of maximizing profits through the aggressive pursuit of 'ancillary revenue opportunities' such as fees, tenant charge backs (when a landlord pays for a repair and charges the tenant later for the cost) or new service charges for surveillance technology and other 'smart home' features"); Mari, supra note 171 (describing how Colony American mandated tenants pay rent via on online portal, which they were charged a $121 "convenience fee" to use).

208. See ACCE Inst. et al., supra note 198, at 25–27 ("[A]ccording to the contract, residents are required to pay for routine maintenance and minor repairs with serious health and safety implications such as drainage, fumigation, and carbon monoxide or smoke detector replacements. Residents are also responsible for fixing appliances such as stoves and refrigerators . . . ."). Some of these fees are distinctly predatory: Invitation Homes reportedly charged tenants up to $20 per month for a "smart lock" service, but waived the first month's fee, so tenants missed their opt-out window before they learned the fee existed. Mari, supra note 171.

209. Julia Conley, Corporate Landlords Reap Big Profits as Rents in Many U.S. Cities Soar by Double Digits, Salon (Apr. 18, 2023), https://www.salon.com/2023/04/18/corporate-landlords-reap-big-profits-as-rents-in-many-us-cities-soar-by-double-digits_partner [https://perma.cc/3BN4-TD25]. Invitation Homes forecasted that their 2022 ancillary service revenues would be close to $30 million, while American Homes 4 Rent realized $178

Corporate Landlords also show a lack of concern for housing quality. News stories have described renters who move into a building needing major repairs and whose repeated calls for maintenance go unanswered by their Corporate Landlords.[210] Some tenants who tried to withhold rent to force repairs found their apartments listed on Zillow and had eviction actions filed against them.[211]

2. *The Social Costs of Financialization.* — Financialization has caused myriad social problems beyond just its economic impacts. Financialization "displac[es] communities for the sake of profit, and 'disconnect[s] housing from its social function of providing a place to live in security and dignity.'"[212] Corporate Landlords have furthered this disparity as they seek new opportunities. Their recent investments have shifted from buying existing homes to buying land for development and constructing purpose-built single-family rentals, a so-called "build-for-rent" (BFR) strategy.[213] Critics of these investments have highlighted their unsustainable impacts on both urban development and the environment.[214]

Other impacts include increased racial disparities in housing. Prior to the Great Recession, subprime lending schemes targeted minority borrowers with illicit and predatory lending tactics,[215] which caused minority homeowners to be disproportionately impacted by foreclosures

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million for ancillary services in 2021, nearly 16% of their overall revenues. Fields & Vergerio, supra note 179, at 37.

210. See, e.g., Marisa Peñazola, Amid a Housing Crisis, Renters Challenge Firms They Say Are Being Exploitative, NPR (Feb. 10, 2022), https://www.npr.org/2022/02/10/1078968784/amid-a-housing-crisis-renters-challenge-firms-they-say-are-being-exploitative [https://perma.cc/DM9A-UXQD] (describing a renter's sewage backup, broken dishwasher, and broken kitchen appliances).

211. See Mari, supra note 171 ("By claiming not to receive the checks or by refusing to cash them on the grounds that 'they weren't for the full amount owed' . . . the company could still evict [a tenant] for nonpayment.").

212. David Birchall, Human Rights on the Altar of the Market: The Blackstone Letters and the Financialisation of Housing, 10 Transnat'l Legal Theory 446, 448 (2019) (footnote omitted) (quoting U.N., Adequate Housing, supra note 165, at ¶¶ 35–37).

213. See Fields & Vergerio, supra note 179, at 40–41 (noting that, by the end of 2021, American Homes for Rent had 12,132 lots in development and had invested nearly $ 1 billion in BFR).

214. See, e.g., id. ("[T]his consolidation of land, technology, and power in the hands of private corporations could have significant implications for environmental and development regulations . . . . [S]ome of the 'hottest' markets attracting SFR investors . . . are also plagued by climate change and environmental vulnerabilities . . . ."). These criticisms echo the rationales offered in support of Anti-Corporate Farming laws. See supra section I.D.

215. See Nemoy Lewis, Off. of the Fed. Hous. Advoc., The Uneven Racialized Impacts of Financialization 12 (2022), https://publications.gc.ca/collections/collection_2023/ccdp-chrc/HR34-2-2022-eng.pdf [https://perma.cc/3YDS-2KNV] (noting that 48% of the lending in Black neighborhoods consisted of subprime loans and that Black borrowers were three times as likely to be offered a subprime mortgage).

in the financial crisis.[216] By selling mortgage portfolios to Corporate Landlords, Fannie Mae and Freddie Mac recreated racial disparities in the same way that policies of redlining did in the past.[217] "The Wall Street takeover [of] homes across the country often happens in neighborhoods that have higher levels of Latino and African American residents—stripping wealth and ownership from communities of color . . . while creating a continued barrier for those communities to rebuild the wealth lost from the foreclosure crisis."[218]

Finally, Corporate Landlords have shown a willingness to flout rules limiting evictions to earn a profit. During the COVID-19 pandemic and the resulting federal eviction moratorium, four large Corporate Landlords rejected federal rental assistance programs and filed eviction actions in spite of federal and local moratoria.[219] These Corporate Landlords harassed tenants, lied about the moratoria, and underreported their eviction filings to federal watchdogs.[220] This practice wasn't unique to private-equity backed Corporate Landlords, though—Milwaukee's largest Corporate Landlord, owned by a single individual shareholder, filed 225 eviction actions within a single week.[221] These evictions were likely profit motivated. In states like New York, where rent stabilization laws mainly protect existing tenants from rent hikes, evictions are a way to remove tenants from rent-stabilized units in order to raise rents for their replacements.[222]

3. *Proposed Solutions to Financialization.* — Several solutions have been proposed as remedies to the financialization of housing. This section

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216. ACCE Inst. et al., supra note 198, at 30; see also Elora Lee Raymond, Ben Miller, Michaela McKinney & Jonathan Braun, Gentrifying Atlanta: Investor Purchases of Rental Housing, Evictions, and the Displacement of Black Residents, 31 Hous. Pol'y Debate 818, 821 (2021) ("Predatory subprime lending and the subsequent foreclosure crisis devastated historically Black neighborhoods in Atlanta, which had some of the highest foreclosure and vacancy rates in the nation . . . .").

217. See ACCE Inst. et al., supra note 198, at 10, 30–32 ("The concentration of institutional investment in Black communities will likely hinder wealth building and result in greater racial disparities.").

218. Id. at 30.

219. See Staff of Sel. Subcomm. on the Coronavirus Crisis, H. Comm. on Oversight & Reform, 117th Cong., Examining Pandemic Evictions: A Report on Abuses by Four Corporate Landlords During the Coronavirus Crisis 2–3 (2022), https://www.govinfo.gov/content/pkg/GOVPUB-Y4_OV2-PURL-gpo190651/pdf/GOVPUB-Y4_OV2-PURL-gpo190651.pdf [https://perma.cc/V89C-QV65] [hereinafter Examining Pandemic Evictions].

220. See id. at 7–23.

221. Abigail Higgins, One Millionaire Landlord Was Behind Half of Milwaukee's Evictions During Covid Lockdowns Last June. Here's the Story of How Corporate Landlords Helped Drive the Evictions Crisis, Bus. Insider (Mar. 26, 2021), https://www.businessinsider.com/how-corporate-landlords-helped-drive-the-covid-evictions-crisis-2021-3 [https://perma.cc/9CEH-D83].

222. See Stovall, supra note 188.

reviews some of these proposals, briefly describes each one's scope and intended effect, and identifies some of their limitations.

a. *Rent Control Laws.* — Some commentators and policy advocates have promoted broader state and federal rent control laws, which would limit the amount by which property owners can increase rents.[223] These proposals would increase properties that are subject to rent control and expand protections to include both rent and other ancillary fees.[224] While some states have revised their rent control laws in light of the growth of Corporate Landlords,[225] federal action in this space has been limited, drawing criticism from tenants' rights groups.[226] These rent control laws, however, as evenhanded regulations on landlords, do not recognize the specific impacts of Corporate Landlords, and they do nothing to decrease rents that are inflated at the start of a tenancy, so tenants moving between homes may not receive effective protection.

b. *Tax Policy Changes.* — Another proposed solution would change tax policy to disincentivize Corporate Landlords. The appeal of real estate as an investment comes from its higher expected returns in volatile markets,[227] so by reducing returns through higher tax costs, lawmakers decrease the attractiveness of these investments. One such proposal would eliminate the mortgage interest tax deduction for large Corporate Landlords and impose a 100% excise tax when they sell single-family homes.[228] Other proposals, touted by some as bans,[229] would impose a tax on the mere ownership of single-family homes by certain corporations and hedge funds.[230]

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223. See, e.g., ACCE Inst. et al., supra note 198, at 41, 43.

224. See, e.g., Fields & Vergerio, supra note 179, at 48–49.

225. See, e.g., Housing Stability and Tenant Protection Act of 2019, ch. 36, 2019 N.Y. Laws 153; Stovall, supra note 188 (describing New York's revised law).

226. See Press Release, Revolving Door Project, Statement: Landlords Celebrate Biden's Weak 'Renter Protection' Plan (Jan. 26, 2023), https://therevolvingdoorproject.org/release-landlords-celebrate-bidens-weak-renter-protection-plan/ [https://perma.cc/39YP-NUFZ].

227. See supra note 180 and accompanying text.

228. See Stop Wall-Street Landlords Act of 2022, H.R. 9246, 117th Cong. (2022). The bill's taxes apply only to "specified large investors," which are taxpayers with more than $ 100 million in assets. Id.

229. See Ronda Kaysen, New Legislation Proposes to Take Wall Street Out of the Housing Market, N.Y. Times (Dec. 6, 2023), https://www.nytimes.com/2023/12/06/realestate/wall-street-housing-market.html (on file with the *Columbia Law Review*).

230. See End Hedge Fund Control of American Homes Act, S. 3402, 118th Cong. (2023) (providing for an excise tax of $50,000 per each single-family rental owned by hedge funds); American Neighborhoods Protection Act of 2023, H.R. 6630, 118th Cong. (2023) (providing for a $10,000 fine for each home over 75 homes owned by corporations and earmarking the revenues for down payment assistance grants); Press Release, Congressman Jeff Jackson, Reps. Jeff Jackson and Alma Adams Introduce American Neighborhoods

These proposals might not effectively shift investment patterns. The proposed tax on sales by Corporate Landlords might create a retrenchment in the SFR market, as increased costs from selling could make continued rental income an equally appealing investment return. And the other taxes assume that corporations are rational actors driven by economic incentives.[231]

c. *Lawsuits*. — Others have taken more direct action to fight Corporate Landlords, by bringing lawsuits in state and federal court. One such lawsuit, brought by Minnesota's Attorney General, alleges that a Corporate Landlord systematically violated the state's warranty of habitability and its unfair trade practices law.[232] In a pattern that echoes the trend across the United States,[233] the defendants allegedly maximized profits by neglecting repairs, cutting costs, and making false representations to tenants.[234] When local governments responded by revoking rental licenses, tenants were left on the hook, often having only forty-five days to vacate their homes.[235]

Another lawsuit, a class action brought in Maryland, alleges that a Corporate Landlord's investment and property management strategies violate the Fair Housing Act by discriminating against minorities.[236] The plaintiffs claim that the defendant has engaged in a pattern of buying rental properties and letting them fall into disrepair, while taking advantage of the acquiescence of their majority-minority tenants who were less likely to object.[237]

Both of these lawsuits were brought under existing housing law frameworks. And both lawsuits implicitly presume that Corporate Landlords are not per se bad actors. Rather, it is only when their practices leave the bounds of existing legal norms that they need to be reined in. As

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Protection Act (Dec. 6, 2023), https://jeffjackson.house.gov/media/press-releases/reps-jeff-jackson-and-alma-adams-introduce-american-neighborhoods-protection [https://perma.cc/WMK4-MLAK] (describing the bill).

231. See infra notes 283–289 and accompanying text.

232. See Complaint at 35–38, State ex rel. Ellison v. HavenBrook Homes, LLC, 996 N.W.2d 12 (Minn. Ct. App. 2023) (No. 62-cv-22-780), 2022 WL 445685 [hereinafter *Havenbrook Homes* Complaint]. The defendants allegedly own and manage fifteen thousand single-family rental homes. Id. at 5.

233. See supra section II.B.

234. See *Havenbrook Homes* Complaint, supra note 232, at 8–25.

235. Id. at 25.

236. See First Amended Complaint and Demand for Jury Trial at 141–47, CASA de Md., Inc. v. Arbor Realty Tr., Inc., No. DKC 21-1778 (D. Md. Mar. 11, 2024). The complaint includes several pictures of boarded-up windows, holes in walls, mold, bedbugs, rodents, rusted appliances, and piled garbage, all in occupied apartments. See id. at 2–29.

237. Id. at 55–81. Plaintiffs argue that this pattern of discrimination is shown, in part, by the fact that defendants invest in rehabilitating properties in neighborhoods that are considered "desirable." Id. at 72–81.

both lawsuits show, this reining in only comes after countless tenants have incurred the social and economic costs that Corporate Landlords create.

d. *Eviction Protections.* — Some have proposed eviction protections that would limit the bases upon which landlords can evict tenants —including in SFRs—to "just cause" grounds.[238] They would also ban discrimination based on the source of income used to pay rent.[239] These proposals overlook the fact that Corporate Landlords have been willing to disregard eviction moratoria and use intimidation and deceit to remove tenants.[240] Furthermore, landlords disappointed by reimbursement rates under federal rental assistance programs have refused to participate, favoring evictions and seeking new tenants willing to pay a higher price.[241] This suggests that Corporate Landlords would not be deterred by stronger laws.

e. *Regulatory Oversight.* — Another call is for stronger regulatory oversight by state and federal governments.[242] These proposals would increase transparency in SFR ownership and help the public identify who to blame for issues in local housing markets.[243] To this end, proponents have called for local governments to expand rental registries and licensing schemes for better monitoring.[244] The federal government has also taken informal steps toward oversight. Congress requested information from Fannie Mae and Freddie Mac regarding the "troubling trend of rent increases and resident displacement" in communities with high levels of private equity ownership.[245] Additionally, the Biden administration announced greater oversight on trade practices to promote rental affordability.[246]

Like lawsuits, these policies assume that Corporate Landlords are legitimate if they follow the consumer protection norms the government establishes for the industry in general. These proposals only provide post

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238. See ACCE Inst. et al., supra note 198, at 41.

239. Id.

240. See supra notes 219–222 and accompanying text.

241. Examining Pandemic Evictions, supra note 219, at 5.

242. See ACCE Inst. et al., supra note 198, at 41–42.

243. Fields & Vergerio, supra note 179, at 48. Corporate Landlords frequently use entities with obscure names to own their properties, limiting the public attention they receive. Id.

244. See id.

245. Letter from Sen. Sherrod Brown, Senate Comm. on Banking, Hous., & Urb. Affs., to Hugh R. Frater, CEO, Fed. Nat'l Mortgage Ass'n (Jan. 10, 2020); Letter from Sen. Sherrod Brown, Senate Comm. on Banking, Hous., & Urb. Affs., to David Brickman, CEO, Fed. Home Loan Mortgage Corp., (Jan. 10, 2020).

246. Fact Sheet: Biden-Harris Administration Announces New Actions to Protect Renters and Promote Rental Affordability, White House (Jan. 25, 2023), https://www.whitehouse.gov/briefing-room/statements-releases/2023/01/25/fact-sheet-biden-harris-administration-announces-new-actions-to-protect-renters-and-promote-rental-affordability/ [https://perma.cc/6VHF-UFDU].

hoc accountability, requiring enough tenants to be harmed to garner public attention before corrective action is taken, and they do not provide for separate enforcement.

f. *Rental Conversion Bans.* — There has only been one recent proposal that would directly restrict Corporate Landlords. In 2023, lawmakers in Minnesota introduced a bill that would prohibit any corporation from buying homestead property and converting it into a single-unit rental property.[247] While this proposal would have gone further than others in proactively regulating Corporate Landlords, its effect would have been limited. It would not unwind existing corporate ownership of SFRs, nor would it stop corporations from buying pre-existing SFRs.[248] The law also only provided for enforcement by the Attorney General,[249] which could have resulted in nonenforcement for political purposes.

III. CREATING AN ANTI-CORPORATE LANDLORD LAW

This Part turns to the legislative proposal at the heart of this Note: the Anti-Corporate Landlord (ACL) laws. It begins by presenting a normative case for ACL laws—that Corporate Landlords warrant specific regulation and that other proposed solutions[250] are insufficient to achieve these goals.[251] It then proposes a model ACL law based on the various ACF laws and discusses concerns as to the validity of these laws that legislators should consider.[252]

A. *The Normative Case for Anti-Corporate Landlord Laws*

As a legislative solution, ACL laws require some measure of normative validity to be politically viable. This section argues that ACL laws are valid based on two linked arguments: Corporate Landlords should be separately

247. See H.F. 685, 93d Leg. (Minn. 2023). This bill contains a substantially similar structure to Minnesota's ACF law. Compare id. ("The legislature finds that it is in the interests of the state to encourage and protect home ownership and the single-family home as a basic housing option . . . ."), with Minn. Stat. § 500.24 (2024) ("The legislature finds that it is in the interests of the state to encourage and protect the family farm as a basic economic unit . . . .").

248. There also seems to be some ambiguity in the scope of the restriction—the text prohibits "purchas[ing] . . . [and] subsequently convert[ing]" property. See H.F. 685, subdiv. 3(a)(1)–(2). This seemingly would not prevent a corporation from converting homes it already owned into SFRs. See Rob Hahn, Minnesota Legislature's Anti Corporate Landlord Bill, Notorious ROB (Mar. 21, 2023), https://notoriousrob.com/2023/03/minnesota-legislatures-anti-corporate-landlord-bill/ [https://perma.cc/X2QD-6Y5E].

249. See H.F. 685, subdiv. 4.

250. See supra section II.C.

251. See infra section III.A.

252. See infra section III.B.

regulated in the SFR market,[253] and incentive-based regulations are not sufficient to limit Corporate Landlord misbehavior.[254]

1. *Corporations Warrant Separate Regulation.* — The first element of this argument is that Corporate Landlords warrant specific regulation. Scholars have offered various arguments on this point. Some focus on the goals of Corporate Landlords and the structures they use to carry out those goals. The corporate form allows landlords to hide behind "veil[s] of anonymity," using LLCs and other entities to "turn[] on its head . . . the ability to determine true ownership of real property . . . [and] to hold accountable the actual human beings responsible for decisions that play . . . a critical role in determining housing outcomes for millions of households."[255] Likewise, many Corporate Landlords are purely profit motivated and focus on shareholder returns.[256] Even when Corporate Landlords don't cut costs and raise revenues by increasing rents and deferring maintenance, they may pursue "alternative mechanisms to increase profits," such as evictions.[257] These distinct incentives militate in support of separate regulatory schemes.

Other arguments for specific regulation of Corporate Landlords focus on their disruptive effect in property theory. Professor Jessica Shoemaker identifies a "placemaking" framework of property rights, whereby property ownership gives people a connection to the places they own.[258] This sense of place leads people to form a geography-based identity.[259] This sense of connection, Shoemaker argues, promotes better land stewardship by property owners.[260] Corporate landlords disrupt this connection by representing a form of "[a]ttachment-less ownership."[261] Private equity firms, enabled by "technology and algorithmic management," "invest in land without having to know anything about specific parcels."[262] While

253. See infra section III.A.1.

254. See infra section III.A.2.

255. See Brandon Weiss, Corporate Consolidation of Rental Housing and The Case for National Rent Stabilization, 101 Wash. U. L. Rev. 553, 554–55, 565 (2023) ("[Land] registries . . . have served the function of providing a modicum of transparency into ownership rights . . . . Tenants were thus able to identify and, in some cases, mobilize against the owners of their properties.").

256. See id. at 562 ("Private equity firms . . . commonly promise double-digit returns to investors over limited time horizons. This results in pressure to rapidly increase the profits from acquired assets . . . ." (footnote omitted)).

257. Id. at 563. Weiss surveys a number of studies showing the eviction rates of Corporate Landlords in different cities: In Atlanta, they are sixty-eight percent more likely to file eviction actions than smaller landlords; in Boston, they are two to three times more likely; and in Kentucky, they are at least twice as likely to proceed to a final eviction judgment. Id. at 563–64.

258. See Shoemaker, supra note 178, at 854.

259. Id. at 855–58.

260. Id. at 867.

261. Id. at 870.

262. Id.

tenants may form the attachments that Shoemaker describes, their unattached Corporate Landlords extract local benefits while depriving tenants of opportunities for governance and stewardship.[263] While these factors may not be unique to corporations—individuals may also be absentee landlords—Shoemaker's argument that "[a]ttachment-less ownership is characterized by . . . commodification[] and often financialization and assetization" echoes the effects of Corporate Landlords on single-family housing.[264]

Proponents of Corporate Landlords may argue that individuals can just as easily be predatory, absentee, and detached from their properties. One relevant example of individual landlords' treatment of their tenants describes impoverished slums, retaliatory evictions, and absentee landowners.[265] But even in this example, individual landlords are depicted as capable of sympathy and compassion for their tenants,[266] and tenants understand that their individual landlords are better than a Corporate Landlord would be.[267]

When landlords misbehave, the corporate form can also limit recoveries for harmed tenants in undesirable ways. While Corporate Landlords may have more financial resources to pay judgments,[268] corporate law and

263. See id. at 870–71

264. Id. at 870; see also supra section II.A.

265. See Matthew Desmond, Evicted: Poverty and Profit in the American City (2016) (describing, in journalistic narrative, the relations between impoverished tenants in Milwaukee and their landlords). For specific examples of predatory individual landlords, see id. at 10–11 (evicting a double-amputee tenant); id. at 18–19 (evicting tenants for calling city building inspectors); id. at 72–73, 255–56 (ignoring code violations in their properties); id. at 102–04 (seeking uncollectible money judgments in eviction court to limit tenants' future rental opportunities); id. at 156–57 (offering tenants a rent-to-own scheme to flip their properties, knowing the tenants are likely to face eventual foreclosure).

266. Desmond's narrative shifts between landlord and tenant viewpoints to express both the landlords' claims of sympathy, as well as the tenants' feelings that their individual landlords are fair negotiators. See id. at 38–41 (telling a story of a landlord accepting a payment plan rather than evicting a tenant); id. at 128–30 (quoting a landlord as saying "[y]ou're loyal to the people who are loyal to you" and allowing a tenant to work off their back rent by helping with repairs and maintenance (internal quotation marks omitted) (quoting Tobin)). To be sure, Desmond is no landlord apologist; the thrust of his work is to explore the human cost and financial burden of evictions on impoverished tenants, and his book concludes by arguing for pro-tenant reforms. See id. at 304 (right to counsel in eviction); id. at 308–12 (universal housing vouchers).

267. Desmond offers an example of a trailer park owner who hires a professional management company to comply with a consent order from the Milwaukee housing authority to keep his license—in light of the new faceless corporate management, tenants fear that they will lose any goodwill and leniency that they have received from their previous property managers. Id. at 128–30.

268. For example, Invitation Homes held over $174 million in cash as of December 31, 2024, and generated $1.08 billion in operating cash flows. Invitation Homes Inc., Annual Report (Form 10-K) F-3, F-7 (Feb. 27, 2025). This cash balance is down from the $701 million in cash Invitation Homes held as of December 31, 2023, in large part due to net

tort law generally restrict the liability that corporations incur. Corporations are generally liable for torts committed by their employees, but punitive damages may only be available if the tortious act is "authorized, ratified, or committed by an officer, director, or managing agent."[269] Corporations can also use layers of subsidiaries—even down to the per-property level—to limit the assets accessible to pay a recovery.[270] While it is sometimes possible to "pierce the corporate veil" to access the assets of the parent corporation,[271] this option may be practically unavailable to tenants taking on powerful Corporate Landlords.[272]

These arguments provide a clear argument in favor of regulating Corporate Landlords. Corporate Landlords have unique motivations that they pursue without regard for tenants; they have a detachment that is inconsistent with social theories of property; and they use an anonymous approach to management that contrasts the humanity of individual landlords.[273]

2. *Restrictions are a Better Regulatory Scheme.* — The next normative argument that supports ACL laws is that other proposed solutions are ineffective at preventing Corporate Landlord misbehavior. Advocates of ACL laws can appeal both to theories of corporate law and corporate behavior but should also be ready to address other criticisms that may be levied against ACL laws.[274]

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repayments of outstanding loan principal of $750 million. See id. at 65 (describing the use of "excess cash" and new financing to repay an outstanding credit facility); see also id. at F-3, F-7 to F-8.

269. See Martin Petrin, Reconceptualizing the Theory of the Firm—From Nature to Function, 118 Penn. St. L. Rev. 1, 26–29 (2013) ("[S]tatutory provisions and case law in a number of states provide that punitive damages can only be awarded upon a showing of involvement by those higher-level corporate officials that control and represent the corporation itself.").

270. See, e.g., Mark Kohler, How Many Properties Should I Put in My LLC?, Mark J. Kohler (Nov. 26, 2024), https://markjkohler.com/how-many-properties-should-i-put-in-my-llc/ [https://perma.cc/UDQ4-Y997] ("Forming and maintaining a single LLC is significantly cheaper than creating separate entities for each property. However, the downside is that all properties within that LLC share liability. For example, if Property #1 is sued, the equity in Properties #2, #3, and beyond could also be at risk.").

271. See Petrin, supra note 269, at 20–22 (discussing the usual grounds on which courts reject the corporate fiction and allow unlimited liability).

272. Courts have repeatedly recognized the power disparities between landlords and their tenants. See Daniel D. Barnhizer, Inequality of Bargaining Power, 76 U. Colo. L. Rev. 139, 170 n.130 (2005) (collecting cases).

273. See supra notes 255–267 and accompanying text.

274. This Note assumes that many of the criticisms levied against ACL laws will echo those that have been offered against ACF laws. See supra section II.C for a discussion of these criticisms.

Corporate theory supports ACL laws. Theories on the *nature* of the corporation have evolved over time,[275] but the dominant view of the *purpose* of a corporation is shareholder focused: A corporation's purpose is to maximize returns for its shareholders.[276] Lawmakers can argue that this purpose is inconsistent with what a landlord's should be. They may recognize a landlord's need to maintain their properties, treat tenants fairly, and create benefits for communities that do not maximize profit. This shift in focus has been recognized in corporate theory—under the name "stakeholderism"[277]—but critics highlight that stakeholderism has existed since at least 1932 and has failed to supplant shareholder primacy theory.[278] Implementing stakeholderism would require a paradigm shift in the norms that guide corporate governance theory,[279] the legal regimes which define fiduciary duties of corporate managers,[280] and the widely accepted metaphysical views about corporations.[281] ACL laws—which are

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275. See, e.g., Petrin, supra note 269, at 2–13. Petrin describes three theories of the corporation: The legal fiction theory, whereby corporations only have the rights and duties granted to them by the state; the real entity theory, in which corporations are equivalent in rights and will to natural persons; and the aggregate theory, whereby corporations have only the rights and duties of their shareholders, which are channeled through the corporate form. Id.

276. See Lisa M. Fairfax, Stakeholderism, Corporate Purpose, and Credible Commitment, 108 Va. L. Rev. 1163, 1167–68 (describing the debate between stakeholderists and "shareholder primacy" adherents and noting that the latter theory generally prevails (internal quotation marks omitted)); Milton Friedman, A Friedman Doctrine—The Social Responsibility of Business is to Increase Its Profits, N.Y. Times Mag., Sept. 13, 1970, at 32 (on file with the *Columbia Law Review*).

277. See Fairfax, supra note 276, at 1171–75 (describing stakeholderism in its current form as focusing on customers, employees, and communities, in addition to corporate profits).

278. See id. at 1167.

279. See id. at 1227–41 (arguing that corporations need to shift their norms and to embrace "credible commitments" in order to effectively implement stakeholderism).

280. See Elisa Scalise, Comment, The Code for Corporate Citizenship: States Should Amend Statutes Governing Corporations and Enable Corporations to Be Good Citizens, 29 Seattle U. L. Rev. 275, 277 (2005) ("[T]he Code [of Corporate Conduct] should be adopted in every state because the current [profit maximizing] configuration of the corporate fiduciary duty inadequately governs corporate decision-making at an unacceptable cost to society.").

281. Compare Brian M. McCall, The Corporation as Imperfect Society, 36 Del. J. Corp. L. 509, 528–36 (2011) (reading Roman corporate structures as supporting the notion that corporations are a "community"), with Petrin, supra note 269, at 4 (reading Roman law as supporting only traditional "fiction" and "legal entity" theories of the corporation). Professor Brian McCall argues that a corporation, as a "community," should serve the common good, writing:

> Shareholder profit, like employee wages, is part of the common good, but not the whole common good of the corporation. Without paying employees or returning profit to shareholders, the corporation could not exist. But the ability to do both is contingent upon serving the customer. Just as the pursuit of shareholder profit cannot be achieved

only an industry-specific restriction on corporations—are less disruptive than a complete upheaval of corporate law and theory, and therefore better reconcile corporate incentives with public policy.

Another argument in favor of ACL laws is that other proposals to limit Corporate Landlords—tax policy, lawsuits, and eviction protections[282]—erroneously focus on either directly regulating or creating disincentives for corporate misbehavior.[283] These policies, Professor Vincent Di Lorenzo argued, are based on the theory that corporations are committed to legal and ethical conduct.[284] This theory assumes that market participants "will comply with legal requirements if all potential costs of noncompliance exceed its benefits."[285] On the contrary, Di Lorenzo identified the specific nature of the legal regime,[286] corporate business models,[287] and behavioral heuristics[288] as multiple factors that interact to influence corporate behavior. Therefore, economic regulations—which only address a single variable—"are almost always doomed to be incomplete and inadequate."[289] In broader criticisms, some have argued that even voluntary shifts in corporate culture are unlikely to incentivize ethical behavior.[290] These theories all support the argument that an outright restriction is the only effective way to rein in Corporate Landlords.

> without the common good of the other members of the community, so too the pursuit of the common good, the satisfaction of customer need, cannot be achieved without shareholder profit.

McCall, supra, at 547 (footnote omitted).

282. See supra section II.C.

283. Lawsuits and eviction protection laws seek to create monetary penalties for violations of the law, whereas tax policy changes increase the tax burden for engaging in a disfavored activity. For further discussion on balancing corporate regulation and corporate incentives, see generally Margaret Ryznar & Karen E. Woody, A Framework on Mandating Versus Incentivizing Corporate Social Responsibility, 98 Marq. L. Rev. 1667 (2015).

284. See Vincent Di Lorenzo, Corporate Wrongdoing: Interactions of Legal Mandates and Corporate Culture, 36 Rev. Banking & Fin. L. 207, 209 (2016).

285. Id.

286. See id. at 236–37 (describing the legal standard itself, the precision of the standard, the frequency of sanctions, and the severity of sanctions as factors that influence corporate behavior).

287. See id. at 237–38 (referencing cost–benefit analyses, which include the assessed risk of noncompliance and potential reputational impact).

288. See id. at 239–40 (discussing skewed risk perception, simplified decisionmaking, and the representativeness heuristic as behavioral barriers to compliance).

289. Id. at 236 (internal quotation marks omitted) (quoting Robert A. Kagan, Neil Gunningham & Dorothy Thornton, Explaining Corporate Environmental Performance: How Does Regulation Matter?, 37 Law & Soc'y Rev. 51, 76–78 (2003)). Di Lorenzo uses the mortgage crisis of 2008 as a case study of regulators applying a "light-touch" approach and financial sanctions, resulting in "recurrent violations of law and recidivist behavior" within the financial services and mortgage lending industries. See id. at 218, 220–21, 226–28.

290. See Michael B. Runnels, Dispute Resolution and New Governance: Role of the Corporate Apology, 34 Seattle U. L. Rev. 481, 482 (2011) ("[T]he modern corporate social responsibility (CSR) movement[] is unlikely to incentivize ethical corporate behavior.").

Finally, proponents of ACL laws should be prepared to respond to outcome-based criticisms. With regard to ACF laws, critics have attacked them for economic effects, such as driving up the price of large tracts of farmland, shifting patterns of agriculture investment out of state, and preventing economies of scale.[291] With respect to Minnesota's proposed ACL law,[292] one critic has argued that the loss of corporate investor demand will drive down property values and hurt homeowners trying to sell their properties.[293] These arguments can be rebutted, though. Single-family housing and farmland are different in their nature and size.[294] Thus, there is less risk of residential lots becoming so large that they price out all individual purchasers. Likewise, while livestock are easily movable, such that shifting patterns of investment actually shift the number of animals in any one state,[295] housing is not. Corporate landlords may shift their home ownership from State A to State B, but that would not move homes out of State A.[296] While there may be downward pressure in the market from initial sales—reducing the cost of entry—economic analysis of ACF laws suggest long-term increases in property values,[297] which could likewise carry over to single-family housing and increase individual wealth. Finally, while ACL laws could prevent landlords from developing economies of scale, these laws—like the ACF laws on which they are modeled—clearly eschew economic factors in favor of greater community benefits.[298]

This is not a complete list of every possible challenge to ACL laws. Lawmakers will likely have to respond to other arguments if they seek to pursue these laws. But the preceding discussion demonstrates that ACL laws have a solid theoretical foundation, and that some possible criticisms can be rebutted with facility.

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291. See supra section I.D.2.

292. H.F. 685, 93d Leg. Sess. (Minn. 2023).

293. See Hahn, supra note 248. Hahn also argues that the law would be ineffective for only preventing conversion of single-family housing to rental property, and not preventing the ownership of single-family housing or already-converted single-family rentals. See id. Hahn's argument mirrors this Note's criticism in that regard. See supra section I.C.6.

294. The national average farm size in 2023 was 464 acres. Nat'l Agric. Stats. Serv., USDA, Farms and Land in Farms 2023 Summary 5 (2024), https://downloads.usda.library.cornell.edu/usda-esmis/files/5712m6524/b2775h03z/ns065w04d/fnlo0224.pdf [https://perma.cc/2ZZY-LJT9]. In contrast, the average lot size of new single-family houses sold in 2022 was only 15,009 square feet, or 0.345 acres. Characteristics of New Housing, U.S. Census Bureau (June 1, 2024), https://www.census.gov/construction/chars/current.html [https://perma.cc/EUV7-XGLD].

295. See supra notes 158–160 and accompanying text.

296. And, by extension, limiting the restrictions to Corporate Landlords does not affect the market for corporate real estate *developers* who build homes to sell to individuals.

297. See supra note 163 and accompanying text.

298. See supra section II.B.1; infra section III.B.1.

B. *Crafting an Anti-Corporate Landlord Law*

With normative arguments in hand, the next step is to craft a statute that is both effective and constitutionally valid. This section offers elements that an ACL law should contain—including proposed language—and evaluates considerations that bear on the validity and efficacy of the ACL law.[299]

1. *Statement of Purpose. —*

The legislature finds that it is in the interests of the state to encourage and protect home ownership and the single-family home as a basic housing option, to allow families increased access to housing through homeownership, for families to build equity and wealth through their housing, and to enhance and promote the stability and well-being of families and society . . . .[300]

Beginning with a statement of purpose clearly identifies the goals of the law. This can help publicize the intent of the legislature and enshrine normative goals. For example, Minnesota's proposed bill focused on "increased access to housing through homeownership" and "families [building] equity and wealth through their housing."[301] Lawmakers may adapt these policy goals as they deem necessary. In light of the housing crisis's impact on racial minorities,[302] lawmakers might wish to make "promoting racial equity in homeownership" a goal. Or, if they support a SFR market and want to promote better practices, they may include a goal of "promoting fair practices in single-family rentals."[303]

A clear statement of purpose can guide later interpretations of the statute as new situations arise.[304] Likewise, the statement of purpose will help the statute withstand constitutional scrutiny. Courts regularly look to statutory purpose when deciding constitutional challenges.[305] Given that the one of the main concerns with constitutionality will likely be the dormant Commerce Clause,[306] and newly enacted laws will not receive the benefit that a history of similar corporate regulations can provide,[307] including a clear nondiscriminatory purpose in the statute's text will be

299. As a formatting note, proposed statutory language is presented in italics.

300. The structure of this proposed provision is based on H.F. 685, 93d Leg. Sess. (Minn. 2023).

301. Id.

302. See supra note 216 and accompanying text.

303. See supra section III.A.1.

304. For an argument that enacted legislative purpose is a useful interpretation tool, see Jarrod Shobe, Enacted Legislative Findings and Purposes, 86 U. Chi. L. Rev. 669, 674–77 (2019) ("Enacted findings and purposes are also prominently included at the beginning of the statutory text Congress votes on, so it is less susceptible to manipulation and is uniquely reliable and attributable to Congress as a whole.").

305. See id. at 694–95.

306. See supra section I.C.3.

307. See supra note 134 and accompanying text.

useful in ensuring the statute is not overturned on constitutional grounds.[308]

2. *Restricted Entities. —*

Unless otherwise provided, no Corporation, Limited Liability Company, or Limited Partnership (hereinafter "Restricted Entity") . . .

In identifying a list of restricted entities, legislators should thoroughly define the "corporate" entities that they wish to restrict. They should look to their own corporate laws and the forms they recognize, as well as other states where corporations commonly register, like Delaware. States should also look to Corporate Landlords' public filings to identify the forms they use to structure their rental operations.[309]

3. *Prohibited Activities. —*

No Restricted Entity shall, either directly or indirectly, own, acquire or otherwise obtain or lease any single-family rental homes in this state. This restriction shall apply to all interests, whether legal, beneficial, or otherwise.[310]

Here, too, lawmakers should write broad enough statutes to encapsulate the various ways Corporate Landlords control property. This may be done through reference to the state's property laws and should include any beneficial ownership forms that the state recognizes. Lawmakers should also consider restricting "management contracts" or other agreements that allow Corporate Landlords to control homes nominally owned by individuals.[311] These provisions will insulate the ACL laws from criticisms that they are not broad enough to *actually* restrict corporate influence in the SFR market.[312] Finally, lawmakers should also consider, as a policy matter, if there are other rental classes they want to restrict and reflect that in the statute's text.[313]

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308. Cf. S.D. Farm Bureau, Inc. v. Hazeltine, 340 F.3d 583, 594 (8th Cir. 2003) (overturning a ACF law after finding discriminatory purpose). Lawmakers must be careful to consistently state their purpose in a nondiscriminatory manner, as courts may look to statements outside the final text of the law in evaluating the legislative purpose. See id. ("Notes from the Amendment E drafting meetings provide additional direct evidence of the drafters' intent to discriminate against out of state businesses.").

309. See Invitation Homes Inc., Annual Report (Form 10-K) Exh. 21.1 (Feb. 27, 2025) (providing a list of one Corporate Landlord's subsidiaries).

310. The structure of this proposed provision is based on Kan. Stat. Ann. § 17-5904(a) (West 2025); Mo. Ann. Stat. § 350.015 (2024).

311. These management contracts allow Corporate Landlords to engage in predatory activities without directly owning any homes. See, e.g., *Havenbrook Homes* Complaint, supra note 232, at 5 ("HavenBrook currently manages over 15,000 single-family rental homes . . . . [In] 2018, Front Yard Residential acquired HavenBrook . . . . [I]ts acquisition . . . would allow it to . . . internalize all property management functions . . . .").

312. See supra section II.D.1.

313. This Note has focused on SFRs. It does not address whether other types of rental housing are adversely impacted by corporate ownership. Housing development generally includes both single-family and multi-family housing, see St. Louis Fed.,

4. *Excepted Entities.* —

This section shall not apply to Family Rental Corporations or Authorized Rental Corporations, as defined in this statute.

Lawmakers should also consider exceptions for certain corporate entities. As this Note argues, one fundamental problem with Corporate Landlords is their lack of connection to the land that they rent.[314] Conversely, corporate forms may facilitate generational transfers of property and businesses within families.[315] For these reasons, lawmakers may wish to except certain closely held entities that maintain a connection between the property owners, managers, and the property itself. Drawing from ACF laws, these may limit owners to a relatively small group of natural persons, all members of the same family, with limits on transfers to outsiders.[316] A familial requirement might incentivize a sense of "place" that comes from generational memories or association with a single-family home.[317] In contrast, an exception similar to "authorized farming corporations" might be less effective, as those exceptions' usual requirement that a corporation make a minimum income—such as 65%[318]—from renting would not prevent corporations created to be landlords from continuing their problematic conduct.[319]

Lawmakers must also be wary of the constitutional significance of these provisions. Exceptions that require a geographic link to the state—such as living in the state—have been overturned for facial discrimination against interstate commerce.[320] Careful drafting might avoid any

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Trends in the Construction of Multifamily Housing, The Fred Blog (July 6, 2023), https://fredblog.stlouisfed.org/2023/07/trends-in-the-construction-of-multifamily-housing/ [https://perma.cc/5Z7W-UGTU] (showing that over 25% of the privately-owned housing units completed in 2022 were in buildings with five or more units), and lawmakers may not wish to disrupt the flow of capital to multi-family developments.

314. See supra section III.A.1.

315. See Lynn A. Stout, The Corporation as a Time Machine: Intergenerational Equity, Intergenerational Efficiency, and the Corporate Form, 38 Seattle U. L. Rev. 685, 696–98 (2015) (describing how "[c]orporate perpetual life" allows for the preservation and transfer of resources to future generations); see also supra note 155 and accompanying text.

316. See supra section I.B.4.

317. See Shoemaker, supra note 178, at 858–61 (describing private ownership of land as fostering "local knowledge [that] can lead to better decision-making than more centralized regulation would").

318. See, e.g., Okla. Stat. tit. 18, § 951(A)(2) (2024).

319. Limiting ownership to a small number of shareholders might echo the family requirements but—lacking the family connection—may not be effective in promoting a sense of "place." See supra note 317 and accompanying text.

320. See supra text accompanying notes 123–127. But see supra text accompanying note 135.

constitutional challenges but so would leaving out the exception entirely.[321]

States may also consider exceptions for other corporations that pose a low risk of predatory activity. Religious, charitable, or educational organizations, which may incorporate for tax-exempt status,[322] might warrant an exception based on the specific state's policies regarding those institutions.[323]

5. *Exempted Activities.* —

Subject to the divestiture requirements of this statute, a Restricted Entity may acquire single-family rental property as security for indebtedness, by process of law for the collection of debts, or by any procedure for the enforcement of a lien or claim thereon, whether created by mortgage or otherwise.[324]

Lawmakers should adopt substantially identical exemptions to the ACF exemptions. Restricted access to credit was a significant contributing factor to the financialization of housing[325] and contributed to some of the racial disparities in the financial crisis.[326] If lawmakers ensure that ACL laws do not disrupt mortgage law, they can limit any disruption to the home lending and credit industries. At the same time, by requiring divestiture of housing obtained through foreclosures or other debt settlements, they can ensure that corporate lenders do not subvert the law by retaining foreclosed property and converting it to rental property.

6. *Effective Date.* —

This statute shall be effective for all single-family rental property, regardless of when a Restricted Entity obtained its interest in the property. Any single-family rental property owned or acquired by a Restricted Entity after this statute's enactment shall be sold within three years.[327]

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321. See Schutz, supra note 127, at 123–34 (identifying risks to ACF laws under the dormant Commerce Clause and arguing that states should remove geographic exceptions to avoid further scrutiny).

322. See I.R.C. § 501(c)(3) (2018) (exempting "[c]orporations . . . organized and operated exclusively for religious, charitable, scientific, . . . or educational purposes" from federal income tax).

323. But see Rosenkrantz, supra note 182 (implicating Harvard, an educational tax-exempt institution, in contributing to Boston's housing crisis as a Corporate Landlord).

324. The structure of this proposed provision is based on N.D. Cent. Code. § 10-06.1-24(4) (2024).

325. See Mari, supra note 171 ("When credit was tight after the financial crisis, [private equity firms] figured out a way to generate more of it by creating a new financial instrument . . . ."); cf. Lewis, supra note 215, at 12 ("Many subprime lenders employed a risk-based pricing system . . . to determine the interest rate [a borrower] would be charged . . . . This, along with relaxed underwriting guidelines, allowed many banks to expand access to credit to communities who would otherwise be excluded." (citation omitted)).

326. See supra note 216.

327. The structure of this proposed provision is based on N.D. Cent. Code § 10-06.1-24(5).

Lawmakers can decide whether their ACL law should have a retroactive effect. Because the financialization problem is ongoing, lawmakers might decide that retroactive effect is the better solution. They may also exempt Corporate Landlords from the strict sale requirement if the Corporate Landlords negotiate a plan to return the property to its original owner.[328] States may also opt for a phase-out period or one longer than three years. Either option would moderate any downward price pressure that would result from an influx of homes in the market and make the law more likely to afford the corporation "a fair opportunity to realize the value of the [property]."[329]

7. *Monitoring Systems. —*

Any Corporate Entity owning single-family rental property in the state shall file with the state a report including: its name and place of incorporation; the registered office of the corporation in the state; the address and parcel information of every single-family rental property owned by the corporation; and the names of the officers and directors of the corporation.[330] *No corporation shall commence leasing a single-family rental until it has filed the report required by this section.*[331]

Reporting requirements allow those charged with enforcing the ACL laws to have information on entities that claim exemptions under the law. Lawmakers may consider including these reports within their ordinary corporate filing requirements.[332] Alternatively, states might leverage local municipalities that license rental properties.[333] Because these municipalities already collect information for licensing, reporting them to the state would prevent duplication of effort.[334]

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328. See, e.g., id. at § 10-06.1-24(6)–(7) (providing an exception for corporations that enter into contracts for deed or leases with purchase option arrangements with the previous owners of the property).

329. See Asbury Hosp. v. Cass County, 326 U.S. 207, 212–13 (1945).

330. The structure of this proposed provision is based on Mo. Ann. Stat. § 350.020(1) (2024).

331. See id. § 350.020(3) (providing the structure for this proposal).

332. State laws generally require both domestic and foreign corporations to file information statements with the state. See Model Bus. Corp. Act § 16.21 (ABA 2024). As of 2023, thirty-four states have enacted the Model Business Corporations Act as their corporate law. See Model Business Corporation Act Resource Center, ABA, https://www.americanbar.org/groups/business_law/resources/model-business-corporation-act (on file with the *Columbia Law Review*) (last updated Jan. 1, 2023).

333. See, e.g., Inspections Services, Minneapolis, Application for a Rental Dwelling License, https://www2.minneapolismn.gov/media/content-assets/www2-documents/business/RLIC—Rental-License-Application.pdf [https://perma.cc/P648-4ANU] (last visited Oct. 16, 2024) (requiring applicants to register the corporation or LLC name, the principal shareholder's name and address, an "associated natural person['s]" name and address, and a listing of all the entity's shareholders or members).

334. But such a provision would not apply to any rentals outside of a recognized municipality or in municipalities that do not require licensing of rental properties.

8. *Enforcement Actions. —*

An action to enforce this statute may be brought in the district court of any county where single-family rental property is owned in violation of this statute[335] *by the Attorney General,*[336] *the District Attorney of said county,*[337] *or any tenant of a Corporate Landlord.*[338]

The Attorney General may bring an action to enjoin any prospective or threatened violation of this statute.[339]

If an action is brought by a private party under this section, the district court must award to the prevailing party the actual costs and disbursements and reasonable attorney's fees.[340]

If the court finds that the single-family rental property in question is being held in violation of this statute, it shall enter an order so declaring; the Attorney General shall file for record any such order with the County Recorder or the Registrar of Titles in the county where the property is located; thereafter, the Restricted Entity owning such property shall have a period of three years from the date of such order to divest itself of the property; this divestment period shall be deemed a covenant running with the title to the land against any Restricted Entity; Any property not divested within the time prescribed shall be sold at public sale.[341]

The final element of an ACL law is the enforcement mechanism. Legislators must decide who can enforce the law, where actions can be brought, and what remedies courts can order. Any remedies should be crafted to ensure that the goals of the statute are not subverted.

The proposed language provides for enforcement by several parties. The Attorney General—the officer generally empowered to enforce state

335. ACF laws generally provide for enforcement in the county where the land is located. See, e.g., N.D. Cent. Code § 10-06.1-24(1)(b) (2024).

336. See id. (authorizing enforcement of North Dakota's ACF law by the Attorney General).

337. The structure of this proposed provision is based on Wis. Stat. & Ann. § 182.001(4) (2025) (authorizing enforcement of Wisconsin's ACF law by any district attorney).

338. Some states that allow private enforcement of ACF laws require a connection to the land, while others allow anyone in the state to bring an action. Compare N.D. Cent. Code. § 10-06.1-25 (providing for enforcement by "any corporation . . . authorized to engage in the business of farming . . . or any resident of legal age of a county in which the farmland . . . owned . . . in violation of this chapter is located"), with Neb. Const. Art. XII, § 8 (repealed 2006) ("If the Secretary of State or Attorney General fails to perform his or her duties as directed by this amendment, Nebraska citizens and entities shall have standing in district court to seek enforcement.").

339. The structure of this proposed provision is based on Minn. Stat. § 500.24 subdiv. 5 (2024).

340. The structure of this proposed provision is based on N.D. Cent. Code § 10-06.1-25.

341. The structure of this proposed provision is based on Minn. Stat. § 500.24 subdiv. 5. The proposed language substitutes three years for Minnesota's five years for consistency with the earlier proposed language.

law[342]—is an obvious candidate to bring enforcement actions. But expanding to local district attorneys and tenants would distribute the administrative burdens of enforcement and limit political nonenforcement. Local enforcement might also be more responsive, as deeds are often recorded at the county level and thus more accessible to county officials.[343] At the same time, restricting individual actions to people with an interest in the property—such as tenants—can prevent nuisance actions by third parties. Fee shifting provisions can also enable tenants without financial means to find a lawyer willing to pursue enforcement against their landlords.[344]

With respect to remedies, the proposed language mirrors ACF laws' general requirement that the violator divest within a specified term. This term may be stated in the statute[345] or left to judicial discretion.[346] In any case, this is an area in which states should exercise caution, lest they violate the Corporate Landlord's due process right.[347] Lawmakers might also consider whether the risk of harm is so great as to warrant an injunction before the corporation can attempt to purchase housing.[348] By registering a judgment of the statutory violation as a covenant running with the land, states can prevent corporations from subverting the law by transferring SFRs between different entities every time the court finds a violation.

Finally, states can structure divestitures to correct injustices created by the housing crisis.[349] While ACF laws often provide for private sales or public auctions—under the same laws as foreclosure sales[350]—such open and unrestricted sales helped contribute to the very problem these laws are seeking to resolve.[351] In seeking to prevent a new cycle of racial disinvestment, state legislatures might consider prioritizing sales to previous owners of the properties or appointing an oversight official to make sure sales are done equitably. Because of the loss of individual wealth

342. See, e.g., N.D. Cent. Code § 54-12-03 (2024) ("The attorney general may make an investigation in any county in this state to the end that the laws of the state shall be enforced therein and all violators thereof be brought to trial . . . .").

343. See, e.g., Minn. Stat. § 386.05 (2024) (requiring the county recorder to keep records of all documents affecting ownership interests in that land).

344. See Fee-Shifting, ABA, https://www.americanbar.org/groups/delivery_legal_services/reinventing_the_practice_of_law/topics/fee_shifting/ (on file with the *Columbia Law Review*) (last visited Oct. 16, 2024) ("[Fee-shifting] provisions are designed to attract lawyers to public interest cases that otherwise would not seem worth the investment.").

345. See supra note 341 and accompanying text.

346. See Wis. Stat. & Ann. § 182.001(4) (2025) (requiring divestiture in a "reasonable" time).

347. Cf. Asbury Hosp. v. Cass County, 326 U.S. 207, 212–13 (1945) (upholding an ACF law because it provided a reasonable time for the corporation to divest its holdings).

348. See supra note 339 and accompanying text.

349. See supra section II.B.2.

350. See, e.g., Minn. Stat. § 500.24 subdiv. 5 (2024).

351. See supra notes 191–198 and accompanying text.

during the financial crisis,[352] individuals may not have access to traditional credit, so lawmakers should also consider implementing a system to expand access to credit. This could be through direct lending, mortgage guarantees, or even a system of lending cooperatives chartered to service this lending niche.[353]

CONCLUSION

Proposals for housing reform have focused on consequences without addressing the root cause of the problem—that Corporate Landlords inherently disrupt communities and deprive people of the benefits of affordable and dignified housing, all for the sake of profit. Previous proposed solutions have assumed that the market should include Corporate Landlords who can invest in SFRs if they choose. In that sense, these proposals seek to structure the marketplace to be more fair—through financial disincentives, rent control, eviction protections, and penalties for failures to "play fair" in the marketplace.

This Note suggests that lawmakers should take a different approach: Declare that the SFR market has *no* place for Corporate Landlords and restrict them from participating in the market entirely. And to the extent state lawmakers agree, ACF laws provide a tried and tested framework to achieve these goals. By using ACF laws as a guide, legislators can enact Corporate Landlord restrictions that are normatively valid, constitutionally sound, and effective at reaching their goals.

352. See supra note 218 and accompanying text.

353. In another analogy to farming, the federal government has a system of farm credit cooperatives that lend money to farmers and finance their loans through public debt issuances. See Our Structure, Farm Credit, https://farmcredit.com/our-structure [https://perma.cc/A9AZ-MG34] (last visited Oct. 16, 2024).