[The Business, Entrepreneurship & Tax Law Review](https://scholarship.law.missouri.edu/betr)

Volume 6 | Issue 2 Article 7

2022

Not For Sale: Why Congress Should Act to Counter the Trend of Massive Corporate Acquisitions of Real Estate

Stephen George

Not For Sale: Why Congress Should Act to Counter the Trend of Massive Corporate Acquisitions of Real Estate

Stephen George[*]

ABSTRACT

The concept that property ownership is a right of the American people has been a bedrock principle of the United States ever since its founding. Property ownership was regarded by the Founding Fathers as an essential right for the American people to truly be independent and free. Throughout the United States' history, property ownership has remained a core principle of American society, from being one of the natural rights that set the foundation of the nation, to form the most critical components of the "American Dream" through the 20th century and into the present. However, the prospects of owning property and the American Dream itself are under duress recently companies like Black Rock and powerful individuals like Bill Gates making massive acquisitions of houses and land. This trend is problematic because if such entities can swoop into real estate markets and buy up land and homes while the rest of the country struggles to meet that kind of buying potential, the prospects of Americans owning their own property and exercising this "right of free people" is in great jeopardy. Put simply, many Americans are already struggling–from loans, oversaturated markets for well-paying jobs, the decline of traditional industries that raised the American people, the COVID-19 pandemic, and more. If the current trend of corporations and wealthy business moguls buying up real estate continues, there may hardly be much left for the average American to aspire to in the end. However, if we preemptively act to protect the average American and the prospect of owning real property, the American Dream will live on. The goal of this article is to evaluate proposed solutions and seek to offer a viable solution that will protect average Americans seeking the American Dream by preserving fair competition and lowering the rising barriers of entry in the real estate and housing markets.

---

* University of Missouri School of Law, J.D. Candidate 2023. Business, Entrepreneurship, & Tax Law Review Member 2021-2022.

I. INTRODUCTION

In America, property ownership is a concept with critical importance that originates in the nation's founding and lives into the present.[1] Not only was it viewed as a natural right, but it was also seen as a guarantee of liberty and integral to a free and independent nation.[2] This can be traced back to Thomas Jefferson's penning of the Declaration of Independence, which famously listed the natural, inalienable rights of "life, liberty, and the pursuit of happiness."[3] Most scholars today theorize that Jefferson was talking about property ownership when he added the right to "the pursuit of happiness," which was inspired by Enlightenment philosopher, John Locke, and his list of natural rights to "life, liberty, and property" from his *Second Treatise of Government*.[4] Historically, owning property was vital to Americans,[5] because many people were self-sustaining and relied on agrarian lifestyles, especially prior to the Industrial revolution.[6] As the population shifted towards cities over the course of the 20th century, the concept of owning a home and property remained of great importance to Americans, as it was and has remained a cornerstone of the "American Dream."[7]

Thus, from a historical perspective, owning property was viewed by the Founders as a natural right incident to a free people,[8] and the people themselves saw owning property as a way to achieve opportunity and freedom not known to them and their ancestors back in what essentially was a still-feudal Europe.[9]

In the present, property remains crucially important, because owning a home and property is a primary way to pass down generational wealth and climb in socioeconomic status.[10] Despite current market conditions and the economy, homeownership is still a major goal for many Americans.[11] A survey of prospective homebuyers by homeowners.com revealed that almost 60% of the responses listed "being a homeowner" as a primary reason for buying a house.[12] The same survey showed that 62% of individuals considered "millennials" become homeowners, despite past projections by experts theorizing that millennials would prefer to rent instead and become the first "renter generation."[13] The reasoning for this belief was that millennials would push homeownership to later in their lives, similar to the trend of pushing marriage and forming families later in life in order to obtain higher

1. *See* Paul Larkin, Jr., *The Framers' Understanding of "Property"*, THE HERITAGE FOUND. (July 6, 2020), https://www.heritage.org/economic-and-property-rights/report/the-framers-understanding-property.
2. *See id.*
3. *See Natural Rights: The Declaration of Independence and Natural Rights*, CONST. RTS. FOUND., https://www.crf-usa.org/foundations-of-our-constitution/natural-rights.html (last visited Feb. 7, 2022).
4. *See id.*
5. *See* Larkin, *supra* note 1.
6. *See Industrialization, Labor, and Life*, NAT'L GEOGRAPHIC SOC'Y (Jan. 27, 2020), https://www.nationalgeographic.org/article/industrialization-labor-and-life/12th-grade.
7. *See Is Home Ownership Still Considered Part of the American Dream?*, KEEPING CURRENT MATTERS (Mar. 31, 2021), https://www.keepingcurrentmatters.com/2021/03/31/is-homeownership-still-considered-part-of-the-american-dream.
8. *See* Larkin, *supra* note 1.
9. *See Is Home Ownership Still Considered Part of the American Dream?*, *supra* note 7.
10. *See id.*
11. *See generally id.* (discussing that a recent survey shows a majority of prospective homeowners' main reason for buying a home is to be a homeowner).
12. *Id.*
13. Id.

education and gain careers.[14] However, it appears that despite younger generations preferring different timing for their life choices, homeownership is a valuable goal that transcends generational differences.

Property also carries significant economic value along with the societal value it holds"[b]uy land, they're not making it anymore."[15] This sentiment highlights what makes land so inherently valuable—it is a finite resource and one of the few objects that only appreciates over time.[16] Thus, it is a valuable asset to buy and possess in business. Companies and individuals that own property for business purposes can cash in on benefits such as tax breaks, building equity, and a stream of passive income.[17] However, recent years have shown that this business practice, one that seems smart and innocent, is growing

Simply put, real estate investment firms like Blackstone Group bid high on houses that are for sale and buy them as long as the price they pay is lower than the cost it would take to build a similar house.[18] This tactic has become common, and in 2018, corporations bought one out of every ten suburban homes that were sold.[19] The onset of this trend began after the 2008 financial crisis when corporations began buying homes en masse and renting them out.[20] Another problem related to property acquisition is the mass accumulation of farmland. For instance, Chinese companies and businessmen owned 192,000 acres of American farmland worth $1.9 billion at the beginning of 2020.[21] Bill Gates, the founder of Microsoft and one of the richest men in the world, is currently the largest private farmland owner in America.[22] Gates currently owns 242,000 acres of farmland in 19 different U.S. states. The onset of farmland becoming a valuable asset came after the 2008 financial crisis when investors were looking for assets that were safer from financial collapses than those like bonds.[23]

Thus, property is not only a safe and sought-after investment but also an integral part of our society. The current issue is that so much land is being bought up that the average American is left with less opportunity to secure property of their own and reap the benefits. If not enough Americans are able to attain property and homes of their own in the future, the American middle class will continue to shrink as it will be deprived of such a secure and steady way of building generational wealth. This would only further the wealth gap between those who own a majority of the nation's wealth and now the land, and those who will have to rent and turn to

---

14. *Id.*

15. *See* Douglas A. McIntyre, *Memo to Congress: "Buy Land, They Ain't Making Any More of It"*, TIME (Jan. 28, 2009), http://content.time.com/time/business/article/0,8599,1874407,00.html.

16. *See* James Harris, *5 Reasons Why Real Estate Is a Great Investment*, ENTREPRENEUR (Nov. 16, 2017), https://www.entrepreneur.com/article/304860#:~:text=Real%20estate%20provides%20better%20returns,market%20without%20as%20much%20volatility.&text=Real%20estate%20gives%20you%20more,streams%2C%20while%20enjoying%20capital%20appreciation.

17. *See* Dan Rafter, *Why Invest in Real Estate? 10 Reasons and Benefits*, ROCKET MORTG. (Jan. 7, 2022), https://www.rocketmortgage.com/learn/benefits-of-real-estate-investing.

18. *See* Larry Getlen, *How Corporations are Buying Up Houses—Robbing Families of the American Dream*, N.Y. POST (July 18, 2020), https://nypost.com/2020/07/18/corporations-are-buying-houses-robbing-families-of-american-dream.

19. *Id.*

20. *Id.*

21. *See* Rebecca Bauer, *He Says It's Not About Climate. So Why is Bill Gates Investing in Farmland?*, AGFUNDERNEWS (Aug. 27, 2021), https://agfundernews.com/gates-if-not-for-climate-then-why-is-bill-buying-up-so-much-farmland.

22. *Id.*

23. *Id.*

other less-certain ways of generating whatever remaining wealth is left for them. This article will examine whether a solution can be tendered to stem the tide of this massive land grab by firms and people with deep pockets. Part II of this article will examine how property ownership has become a guidepost for prosperity in America. Part III will investigate the reasons corporations and wealthy investors are accumulating so much land. Part IV will look at the effects this property accumulation brings on the American people, while Part V will examine possible solutions to this problem, and Part VI will conclude this article.

II. Property Ownership as a Measure of American Prosperity

Property rights are necessary to have a free society.[24] During the Colonial Era in America, private property rights were viewed as important, and the security of property rights was one of the most important values that the Founding Fathers held when they established what would become the United States of America.[25] The reasons that property rights were held in such high regard during the nation's founding were because they served the important roles of creating wealth and preserving individual liberty.[26] These two concepts are crucial to self-government and helped the 13 former British colonies build a country of their own after the American Revolution.[27] That high regard for property rights did not fade with time, as property rights were protected and seen as a paramount American interest throughout the 19th century and well into the 20th century.[28]

After the end of World War II in the 1940s, America's economic boom and rise to superpower status were precipitated by the ability of Americans to buy homes and consumer goods.[29] This economic boom was due to Americans' ability to acquire property, build wealth, and spread that wealth around by feeding into the nation's economy through buying goods and services.[30] Thus, property rights and their preservation throughout America's history not only benefitted the average citizen but also helped America build the economic profile that made it a formidable power on a global scale.[31] The importance of property rights and the law's defense of those rights afforded people the ability to build wealth fostered an entrepreneurial and innovative culture in America.[32] The Founders believed that property rights were a

24. *See* James W. Ely, Jr., *Property Rights in American History*, HILLSDALE COLL., https://www.hillsdale.edu/educational-outreach/free-market-forum/2008-archive/property-rights-in-american-history (last visited Feb. 21, 2022).
25. *Id.*
26. *Id.*
27. *Id.*
28. *Id.*
29. *See* Sarah Pruitt, *The Post World War II Boom: How America Got Into Gear*, HIST. (May 14, 2020), https://www.history.com/news/post-world-war-ii-boom-economy.
30. *See generally id.* (explaining that American consumers purchased items such as homes, cars, and appliances en masse, feeding America's post-World War II economic boom as the country produced those items at a high scale to meet the demand).
31. *Id.*
32. Guy Sorman, *A Brief History of American Prosperity*, CITY J., Autumn 2012.

prerequisite for a free nation and people,[33] but America's history and global status make the case that it may be a prerequisite for a powerful nation as well.

On a more individual scale, owning a home or property is an excellent way to accumulate wealth and ensure that it is passed down to future generations.[34] Owning property accumulates wealth in several ways. First, making mortgage payments on property builds one's equity in that property, which in turn increases a person's net worth.[35] Second, property builds wealth because it generally appreciates and further builds net worth.[36] Third, there are numerous tax benefits that come with owning property. These include the "tax shelter" that generally prevents taxation on profits earned when selling property, as well as other tax deductions related to mortgage payments.[37]

The wealth benefits of owning property are also quantifiable, as seen in a recent Survey of Consumer Finances undertaken by the Federal Reserve which found that homeowners have "44.5 times more net worth than renters."[38] In 2016, the median net worth of homeowners grew by 15% from 2013 to $231,400.[39] However, the median net worth of renters fell by 5% to $5,200.[40] Thus, it is clear that owning property is a major advantage to people who are seeking financial success for themselves and their families.

Property ownership understandably became a common practice in America and a core component of the "American Dream."[41] This is evidenced by U.S. Census Bureau data, which shows that over 60% of the American population has consistently been made up of homeowners since the 1960s.[42]

The concept of the American Dream stands for the idea that anyone can be successful and increase their social status in America.[43] Property ownership intuitively fits neatly in with this concept because of the benefits that owning property gives individuals, making it one of the primary methods to successfully realize the American Dream.[44]

Therefore, it is clear how property ownership and the economic prosperity of the American people have been linked over time.[45] This is because the ability to

---

33. *See* Ely, Jr., *supra* note 25.
34. *See The Path to Financial Freedom: How Home Ownership Builds Wealth*, MORTAGE300, https://mortgage300.com/blog/08/the-path-to-financial-freedom-how-homeownership-builds-wealth (last visited Feb. 20, 2022).
35. *Id.*
36. *Id.*
37. *Id.*
38. *Id.*
39. *Id.*
40. *Id.*
41. *See* Brian H. Robb, *Homeownership and the American Dream*, FORBES (Sept. 28, 2021, 7:15 AM), https://www.forbes.com/sites/forbesrealestatecouncil/2021/09/28/homeownership-and-the-american-dream/?sh=1d9f4aa823b5.
42. *Id.*
43. See Adam Barone, *American Dream*, INVESTOPEDIA, https://www.investopedia.com/terms/a/american-dream.asp#:~:text=The%20American%20dream%20is%20the,mobility%20is%20possible%20for%20everyone (last updated Aug. 1, 2021).
44. *Id.*
45. *See generally* Jason Gordon, *Property and Economic Prosperity—Explained*, THE BUS. PROFESSOR, https://thebusinessprofessor.com/en_US/property-law/property-and-economic-prosperity (last updated Sept. 24, 2021) (explaining that overall economic productivity is improved as individuals work to acquire and retain property).

acquire some property allows one to try to acquire more property.[46] The result of incurring the value of owned property and the effort to gain more leads to greater economic efficiency and productivity.[47] Since maintaining the individual's right to secure property has been a core tenet of American society and governance since the nation's beginning, the benefits of the relationship between property rights and prosperity reached such a scale that the United States became the richest and most powerful country on the planet by the mid-20th century.[48] Therefore, property rights clearly have directly contributed to the prosperity of the American people and the United States as a nation, and this is why they have remained a principal component of American life through the ages.

III. How Owning Property is a Major Benefit to Corporations

Owning property and enjoying its benefits is not only an aspiration for the average American but for businesses as well. Real estate is an incredibly valuable asset for anyone who owns it,[49] including benefits such as predictable cash flow, tax advantages, and the potential to "leverage" it to accumulate wealth.[50] This is especially true in the business context. Leveraging real estate involves the process of purchasing real estate by making a small down payment and owing the rest in debt.[51] The advantage of using leverage is that if the real estate's value appreciates, the owner reaps that value.[52]

Another way a corporation can capitalize off of owning property is to own the real estate through a limited liability company or partnership, which would allow the resale of the property without paying corporate tax.[53] Other benefits that can be gained from this approach are refinancing the property to the benefit of the owners and collecting lease payments from the property, which are both exempt from employment taxes and tax deductibles as "business expenses" for the corporation.[54] Another advantage to owning property for corporations is that they can bring in a steady cash flow from leasing the property.[55] A consistent cash flow provides major benefits to any corporation, both in the short and long term.[56]

However, owning property is not exclusively beneficial, as there are some obstacles involved with owning property that corporations must deal with. First, a

46. *See id.*
47. *Id.*
48. *See* Pruitt, *supra* note 30.
49. *See* Barclay Palmer, *Key Reasons to Invest in Real Estate*, INVESTOPEDIA, https://www.investopedia.com/articles/mortgages-real-estate/11/key-reasons-invest-real-estate.asp (last updated Apr. 7, 2022).
50. *Id.*
51. *See* Lisa Smith, *How to Increase Your Real Estate Net Worth with Leveraging*, INVESTOPEDIA, https://www.investopedia.com/articles/mortgages-real-estate/10/increase-your-real-estate-net-worth.asp#:~:text=Leverage%20uses%20borrowed%20capital%20or,to%20losses%20if%20values%20decline (last updated June 4, 2022).
52. *See id.*
53. *See Why Corporate Owned Real Estate is a No No*, WCRE (Oct. 25, 2017), https://wolfcre.com/corporate-owned-real-estate-no-no.
54. *See Id.*
55. *See The Pros and Cons of Corporate-Owned Real Estate*, PRASAD CPA, https://www.prasadcpa.com/blog/pros-and-cons-corporate-owned-real-estate (last visited Feb. 24, 2022).
56. *See id.*

primary drawback is the costs associated with acquiring and maintaining the corporate-owned property.[57] These costs include the capital necessary to actually purchase the real estate, as well as the costs associated with maintenance and insurance of the property.[58] Second, another challenge implicit in trying to reap the economic benefits of owning property is the time involved.[59] Time is a factor that must be considered because property generally takes time to change hands through transactions, and the appreciation of the value of the property requires an adequate amount of time in order to see gains on the initial investment.[60] Third, another major consideration that must be accounted for is the other costs involved with owning the real estate.[61] These costs can include issues with tenants paying rent or even unexpected maintenance costs that any property owner may have to deal with over the course of owning the real estate and the facilities on it.[62] Thus, there are costs and risks involved when it comes to corporations wishing to invest in real estate, but the benefits are generally worth it for corporations that are large and wealthy enough to be well-suited to handle the potential drawbacks.

In light of this commercial real estate is a common practice in America that has generated a large amount of wealth for corporations who invest in it.[63] Commercial real estate is defined as property that corporations buy with the intent to earn a return on investment via income, capital appreciation, or both. In essence, commercial real estate is the term that sums up property purchased for the corporate benefits mentioned earlier. Types of commercial real estate properties include office buildings, industrial facilities, multifamily residential complexes, and retail properties.[64] Estimates currently show the value of commercial real estate in America to be between $14 trillion and $17 trillion, with the multifamily residential variety being the most valuable[65], accounting for $2.9 trillion. However, the majority of these properties are owned by two types of investment firms: real estate investment trusts ("REITs")[66] equity firms, $3.5 trillion.[67]

Another trend that is becoming increasingly common in America is corporations buying homes, with the housing market showing increased home prices and rent.[68] From April 2021 to June 2021, companies and institutions bought 15.9% of all properties sold.[69] This trend did not just start there, as corporations actually bought slightly more properties in early 2020, where they purchased a record 16.1%

57. *Id.*
58. *Id.*
59. *Id.*
60. *See generally id.* (explaining that there is time involved in finding and maintaining real estate and this is a challenge that the investor must account for).
61. *See generally id.* (discussing that real estate requires adequate funds to be purchased and that tenants can cost the property owner, such as if the business's cash flow is interrupted or the tenant cannot afford rent).
62. *Id.*
63. *See generally Commercial Real Estate and the US Economy by the Numbers*, FNRP (June 6, 2021), https://fnrpusa.com/blog/commercial-real-estate-numbers (discussing that the total value of commercial real estate in America is estimated to be between $12 and 14 trillion).
64. *Id.*
65. *Id.*
66. *Id.*
67. *Id.*
68. *See* Alex Veiga, *Companies Step Up Buying Houses, Bet on Hot Housing Market*, US NEWS (Sept. 9, 2021), https://www.usnews.com/news/business/articles/2021-09-09/companies-step-up-buying-houses-bet-on-hot-housing-market.
69. *Id.*

of all property sold.[70] For single-family homes, 16% of the total was bought by corporations in the April 2021 to June 2021 window.[71] The data shows that this trend is growing at a fast rate, for only 8.4% of single-family homes were bought by corporations a decade ago.[72] The rationale behind this practice is similar to that of commercial real estate because these firms buy homes in order to rent them out to tenants and to build cash flow off of them.[73] With a hot housing market and high house prices, corporations can outbid prospective homeowners, obtain the properties sought, and flip the homes into rentals to generate profits.[74]

Thus, investing in commercial real estate and homes has become a common practice among American corporations in recent years. Investing in these types of properties offers incredibly valuable returns as shown by these statistics. In effect, large corporations and investment firms with ample resources are able to take advantage and invest in many types of real estate properties, which generate vast profits. Therefore, owning real estate is quite beneficial to corporations, and lately, they have been literally cashing in on their opportunities.

IV. THE PROBLEM WITH THE CURRENT TREND OF MASSIVE REAL ESTATE ACQUISITION

The benefits of owning property are apparent for both everyday Americans and businesses alike. However, the interests of individuals wanting to build wealth and stability by owning property and those of businesses looking to cash in on steady, valuable assets have been set on a collision course. In order to understand how this has happened, one has to look back to just over a decade ago, when the Great Recession occurred. The ensuing real estate grab by investors, along with other economic factors in America, has caused major negative consequences for Americans who are seeking to recover from the Great Recession or are coming of age and are prospective property owners.

A. The 2008 Financial Crisis Primes the Housing Market for Big Investors

In 2008, the American housing market collapsed, triggering a financial crisis that became known as the Great Recession.[75] The decade before the 2008 collapse saw a sharp rise in homeownership, and housing price saw their largest increase in American history between 1998 and 2006.[76] Property values were so good in fact, that people who owned homes could sell their houses for a profit if they were unable

70. *Id.*
71. *Id.*
72. *Id.*
73. *See generally id.* (discussing how the housing market collapse in the mid-2000's ushered in a wave of corporate investors into the single-family housing market to capitalize on collecting rent).
74. *Id.*
75. *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#:~:text=The%20decline%20in%20overall%20economic,recession%20since%20World%20War%20II.
76. *See id.*

to pay their mortgage payments.[77] The collapse, however, was brought on by questionable lending practices where people who otherwise should not have qualified were loaned money and were unable to pay back their debt.[78] With more people getting loans for housing, the demand went up for housing and the price followed.[79]

However, the volatile market, lack of effective financial regulation, and the bursting of the housing "bubble" led to a financial system collapse that was the worst since the Great Depression of the 1930s.[80] At this point, over-leveraged banks and lending institutions were pushed to the brink of insolvency, the U.S. lost over 8.7 million jobs, and American households lost around $19 trillion in net worth.[81] Just in 2008, 3.1 million Americans filed for foreclosure, which equaled one out of every 54 American homes.[82] Between 2007 and 2016, nearly 8 million households lost their homes to foreclosure.[83]

Although the housing market began to stabilize over time, homeownership kept declining in America.[84] For example, homeownership in America in 2005 was 69%,[85] but in 2016, eight years after the collapse, it hit a 50-year low at under 63%.[86] On top of this, the American people were already dealing with the steady loss of American jobs to outsourcing, which saw job opportunities leave American workers to go overseas for cheaper labor since the 1970s.[87] The result of this practice left many Americans without additional education and skills without jobs they relied on and in dire financial straits, along with added stress on government programs like welfare, Medicaid, and unemployment insurance which also affect the American taxpayer.[88] Thus, many Americans who relied on the wealth that owning homes afforded them were now between the housing "rock" and the jobs "hard place" after the 2008 financial crisis. To add insult to injury, the COVID-19 pandemic that made major landfall in the U.S. in early 2020 raised the price of houses and property due to a limited supply and increased demand.[89] Thus, Americans looking to buy homes were hit from several angles with major negative forces over a period of decades, and this has made the prospect of owning a home and securing wealth a fleeting hope for many.

---

77. *See How the 2008 Housing Crash Affected the American Dream*, INVESTOPEDIA, https://www.investopedia.com/ask/answers/062515/how-was-american-dream-impacted-housing-market-collapse-2008.asp#:~:text=The%20Crash,homes%2C%20according%20to%20CNN%20Money (last updated Sept. 28, 2021).
78. *See id.*
79. *See* Weinberg, *supra* note 79.
80. *See The Great Recession*, INVESTOPEDIA, https://www.investopedia.com/terms/g/great-recession.asp (last updated May 26, 2022).
81. *See id.*
82. *See How the 2008 Housing Crash Affected the American Dream*, *supra* note 81.
83. *See* Desiree Fields, *Tech and Finance Firms Buying Up Homes Doesn't Bode Well for Everyone Else*, THE WASH. POST (Jan. 4, 2022), https://www.washingtonpost.com/outlook/2022/01/04/corporate-landlords-silicon-valley.
84. *See How the 2008 Housing Crash Affected the American Dream*, *supra* note 81.
85. *See* Weinberg, *supra* note 79.
86. *See How the 2008 Housing Crash Affected the American Dream*, *supra* note 81.
87. *See* Gary S. Clendenin, *Allaying the Outsourcing Tempest: A Candid Look at Outsourcing Vis-à-Vis the Future of American Jobs*, 14 U. MIA. BUS. L. REV. 295, 298 (2006).
88. *See id.* at 301.
89. *See* Elliot Anenberg & Daniel Ringo, *Housing Market Tightness During COVID-19: Increased Demand or Reduced Supply?*, FED. RSRV. (July 8, 2021), https://www.federalreserve.gov/econres/notes/feds-notes/housing-market-tightness-during-covid-19-increased-demand-or-reduced-supply-20210708.htm.

Where average homeowners met struggle, investors saw an opportunity in the dropping housing prices in the post-collapse years.[90] In 2011, Morgan Stanley issued a report titled "A Rentorship Society", and within the next year, investment firms raised over one billion dollars to purchase foreclosed homes and convert them into rental properties.[91] Investment firms like Blackstone Group began buying houses en masse and doing so by outbidding people seeking to buy homes to own them.[92] By 2018, corporations were buying one out of ten suburban homes.[93] After the housing market picked back up during the COVID-19 pandemic, investment firms like Blackstone and affluent buyers have capitalized low-interest rates to help them outbid the competition to buy up houses and flip them into rental properties.[94]

Another major problem with this scenario is that more homes are being bought by investors than sold, which makes fewer homes available on the market, and many of those that remain for sale can be bought by investors who can use their financial abilities to out-muscle prospective individual buyers, who then must turn to rent instead.[95] To add to the problems for Americans seeking to buy homes, fewer homes on the market means more people are being forced to rent, and this in turn raises rent prices.[96] Thus, not only are big, rich investment firms and wealthy individuals able to capitalize off of the many issues that have put everyday people into precarious financial situations and outbid most prospective buyers, they are holding the properties to make a profit from the rent and are turning America into a "nation of renters."[97]

Unfortunately for the average American, housing is not the only real property market where predatory investors are buying up the available supply and making it increasingly hard for people to claim their stake in the American Dream. Another market that investors are besieging is the market for land, particularly land in rural areas used for farming. This adds another dimension to the overall problem of wealthy players in the real estate market taking away opportunities from everyday Americans who seek to buy property for themselves and build wealth.

B. Farmland's Steady Value Increase Draws Investors into the Market

Like housing, investing in farmland is becoming an incredibly valuable venture. As of 2020, over 80% of farmland in the U.S. was owned by people 55 years old or older, with half of those owners being 75 years old or older.[98] This means that a majority of the farmland in the U.S. will change hands in the next five to 20 years, and investors are jumping in to buy increasingly expensive farmland as it

90. *See generally* Getlen, *supra* note 18 (explaining how corporations began buying suburban houses en masse in the wake of the 2008 financial crisis).
91. *See id.*
92. *See id.*
93. *See id.*
94. *See* Veiga, *supra* note 72.
95. *See id.*
96. *See id.*
97. *See id.*
98. *See* Dan Charles, *Big-Money Investors Gear Up for a Trillion-Dollar Bet on Farmland*, NPR (July 30, 2020, 5:00 AM), https://www.npr.org/2020/07/30/892366385/big-money-investors-gear-up-for-a-trillion-dollar-bet-on-farm-land.

becomes available.[99] Farmland is a target for investors because it has the implicit quality that real property has–it increases in value, and it is a limited resource.[100] In 2020, the U.S. Department of Agriculture estimated that of the 911 million acres of U.S. farmland, 39% of that land is rented out to farmers.[101] Of that rented farmland, 80% of it is owned by landlords who do not farm themselves.[102]

The reason that farmland is so easily bought is that the wealth of the owners themselves reside in their ownership of the land.[103] Thus, to make a return on their equity in the land, they sell it and that is how they can fund their retirement or otherwise make up for any lack of cash on hand.[104] As a result, more and more farmland is becoming owned by people not connected to the land,[105] and instead of using it to grow a farm business or build familial wealth, it is simply an investment. With many farmers retiring and putting their land up for sale, investors see a rich opportunity in purchasing it since its value continues to increase and they can profit off of renting the property to younger farmers who do not own their own land or need more land to farm.[106]

Just as they did with the housing market, investors took advantage of the 2008 financial crisis.[107] The financial crash caused investors and firms to become more conservative in their investments, and farmland became a key target for being a safe, steady asset to add to portfolios.[108] The current trend of climate preservation is another major reason investors have recently set their sights on owning farmland.[109] In 2019 alone, investors raised $5.7 billion in farmland funds, and even after COVID-19 stymied global markets in 2020, they still raised $2 billion.[110]

The investment trend in farmland is not limited to just firms, as wealthy individuals have also established a formidable presence in the farmland market. Bill Gates is currently America's largest private landowner, holding a whopping 242,000 acres of farmland and roughly 27,000 acres of other types of land, bringing him to just under 269,000 acres total.[111] Another major holder of land, Thomas Peterffy, owns 581,000 through his role as chairman of Interactive Brokers.[112] If anything puts a succinct rationale for buying up vast portions of farmland to rent and pushing out potential individual owners, it's Peterffy's quote saying, "The young

---

99. *See id.*
100. *See* Nathaniel Lee, *Here's Why the Ultra-Wealthy Like Bill Gates and Thomas Peterffy are Investing in U.S. Farmland*, CNBC (Aug. 20, 2021, 7:05 AM), https://www.cnbc.com/2021/08/20/heres-why-the-ultra-wealthy-like-bill-gates-investing-to-farmland.html.
101. *See Farmland Ownership and Tenure*, USDA ECON. RSCH. SERV., https://www.ers.usda.gov/topics/farm-economy/land-use-land-value-tenure/farmland-ownership-and-tenure (last updated May 16, 2022).
102. *See id.*
103. *See* Lee, *supra* note 104.
104. *See id.*
105. *See* Charles, *supra* note 102.
106. *See Investors and Pension Funds are Buying Up Farmland. What Happens to the Land Itself?*, THE COUNTER (Aug. 4, 2020, 12:32 PM), https://thecounter.org/investors-pension-fund-buying-farmland-farm-property/.
107. *See* Judith Evans, *Bill Gates' Farmland Buying Spree Highlights Investment Appeal*, FIN. TIMES (Mar. 28, 2021), https://www.ft.com/content/d158779e-368b-482b-9734-b06cf7fde382.
108. *See id.*
109. *See id.*
110. *See id.*
111. *See* Bauer, *supra* note 22.
112. *See* Lee, *supra* note 104.

farmers are just as happy to lease the land because whether you are young or old, it's a business, right?"[113]

To further the land grab, foreign companies from all over the globe are in on it too. As of the end of 2019, foreign investors owned an interest in almost 35.2 million acres of U.S. farmland.[114] This amounted to 2.7% of all U.S. agricultural land and 1.5% of total American land.[115] Over the last decade, Chinese companies have bought both American farmland and major agriculture businesses that operate in the U.S.[116] Going into 2020, Chinese companies owned almost 192,000 acres of American agricultural land.[117] Other nations have gotten into the mix too, with Canada owning almost 7.5 million acres, Germany holding almost 1.2 million acres, Italy owning nearly 2.5 million acres, and the Netherlands owning almost 4.5 million acres of U.S. farmland.[118] Recent concerns and proposed legislation have focused on limiting China's influence over American agriculture due to China's delicate position as a geopolitical adversary and crucial trade partner for the United States.[119] Regardless of whether the threat of Chinese hindrance of the American food and land supply is a legitimate policy concern for American lawmakers, the reality is still that foreign nations are investing in millions of acres of U.S. farmland, and this cuts out Americans seeking to own farmland for individual posterity all the same.

C. *The Future of Average American Property Ownership Requires a Solution*

In summation, there are several factors that have hit the American working class hard when it comes to their prospects of owning property. The outsourcing of jobs, the slow recovery from the Great Recession, and the pressures of the COVID-19 pandemic have slowly grinded away at the wealth that many Americans had over time. Going forward, there are those who have lost and seeking to recover as well as those coming of age and seeking to prosper on their own. However, there is now a major obstacle that will prevent the American people from capitalizing on the method that built up their wealth in the first place–owning homes and land. This obstacle is the massive influx of investments buying up the available houses and land on the market. In turn, people looking to secure their own real property are being priced out of opportunities and forced to rent, which prevents many Americans from building the stable wealth that historically was crucial to bolstering the American middle class, the American economy, and the U.S. as a whole. If left unaddressed, there will be a staggering impact in the U.S. by shrinking the middle class even more and shifting more wealth upward in an already top-heavy and ever-growing wealth gap.

113. *See id.*
114. *See* U.S. DEP'T OF AGRIC., FOREIGN HOLDINGS OF U.S. AGRICULTURAL LAND THROUGH DECEMBER 31, 2019 (2020).
115. *See id.*
116. *See* McCrimmon, *supra* note 21.
117. *See* U.S. DEP'T OF AGRIC., *supra* note 118.
118. *See id.*
119. *See* Yinan Wang, *Lawmakers Seek to Curb Chinese Ownership of US Farmland*, VOA NEWS (July 31, 2021, 8:06 PM), https://www.voanews.com/a/usa_lawmakers-seek-curb-chinese-ownership-us-farmland/6208972.html.

Without a solution, the middle class in the U.S. and the American Dream are in serious jeopardy considering how vital property ownership opportunities were for the development of both of these things. Therefore, finding an effective solution to this problem is not just desirable, but of the utmost importance for the sake of millions of Americans and arguably the future of their nation. The next section of this article will explore some options that may provide such solutions.

V. FINDING A SOLUTION TO PRESERVE THE AMERICAN DREAM FOR THE FUTURE

At a glance, one may think that these problems could simply be solved by preventing investors, both foreign and domestic, from investing in property or imposing caps. However, it is not that simple. Before considering the massive contribution to the economy that real estate investment and development provides,[120] the concept of limiting opportunities to buy property would be met with great pushback as being anti-capitalistic and "un-American." Property rights limitations such as eminent domain and zoning laws provide clear examples of how restrictions on property rights draw such fierce criticism from those who stress the importance of private property ownership in America.[121] Fortunately, the mass acquisition of property by investors and its ramifications on everyday people have not gone unnoticed, and there are some solutions that have been proposed.

A. The Biden Administration's Plan

One proposed solution lies in the Biden Administration's plan, which it announced in September 2021 to address the impact on affordable housing that large investors have had in the housing market.[122] Concerned with the massive number of houses being purchased by investors and the subsequent increase in housing and rent costs, the Biden Administration is looking to implement a multifaceted plan as a component of the administration's larger "Build Back Better" agenda.[123] The main focus of the Biden Administration's plan ("Biden plan") is to increase the supply of affordable houses in the U.S.[124] The goal is to add 100,000 homes to sell to

---

120. *See generally Commercial Real Estate and the US Economy by the Numbers*, *supra* note 64 (discussing that commercial real estate accounted for $396.4 billion in personal earnings and 9.2 million jobs 2021 alone).

121. *See generally* Ilya Somin, *America's Weak Property Rights Are Harming Those Most in Need*, THE ATL. (Mar. 24, 2020), https://www.theatlantic.com/ideas/archive/2020/03/weak-property-rights/608476 (discussing that eminent domain more often destroys more economic value than it creates and that displaced property owners usually are not compensated fairly, especially if they are poor or lack legal sophistication).

122. *See generally Fact Sheet: Biden-Harris Administration Announces Immediate Steps to Increase Affordable Housing Supply*, THE WHITE HOUSE (Sept. 1, 2021), https://www.whitehouse.gov/briefing-room/statements-releases/2021/09/01/fact-sheet-biden-harris-administration-announces-immediate-steps-to-increase-affordable-housing-supply (addressing the fact that corporate investors have increased their purchases of homes and that the result is that less first-generation home buyers can afford homes because of increased costs on the market and increases in rent.).

123. *See id.*

124. *See id.*

homeowners, renters, and non-profit organizations in the next three years and prevent large investors from swooping in on them.[125]

Specifically, this plan seeks to accomplish this goal by working with multiple federal agencies, like the U.S. Department of Treasury, the Federal Housing Administration, ("FHA"), and the U.S. Department of Housing and Urban Development ("HUD").[126] The federal government would work with these agencies to provide capital, raise Fannie Mae and Freddie Mac equity caps, and give funding to community development financial institutions.[127] The expansion of federal funding for these projects is aimed to manufacture more homes and housing units.[128] The mechanism for protecting these properties from investors to facilitate homeownership will be through limiting sales to certain government-owned, FHA-insured properties and instituting exclusive periods where "only governmental entities, owner-occupants, and qualified non-profit organizations are able to bid on certain FHA-insured and HUD-owned properties."[129] These goals also involve a plan to provide funding to state and local governments to "reduce exclusionary zoning" and work with the leaders of those governmental bodies.[130]

While this plan is ambitious and has its sights set on tackling housing cost and supply problems caused by large investors, it has its critiques. The alleged problems with the Biden plan are that is it both inadequate in volume and inadequate in dealing with market structure issues.[131] From a volume standpoint, a National Low Income Housing Coalition study estimates that affordable housing is at a deficit of 6.8 million units.[132] This obviously is way beyond the 100,000 units that Biden's administration plans to build at the onset, and even if they accomplish their long-term goal of adding two million homes after spending $300 billion,[133] that still falls well short of the number of housing units needed to make up the total deficit. After all, billions of American tax dollars and several types of solutions have aimed to tackle affordable housing problems with little to no avail.[134]

The other criticism of the Biden plan is that it fails to address a key factor in why investors are buying homes from the market. Current market conditions and foreclosure moratoriums are pushing investors into the open market because their traditional method of buying existing, foreclosed units has been stalled by COVID-19 policies preventing eviction and foreclosure.[135] Also, trying to incentivize local governments to change their zoning regulations is likely to fail since many local governments have shown consistent reluctance to relax these regulations over

125. *Id.*
126. *Id.*
127. *Id.*
128. *Id.*
129. *Id.*
130. *Id.*
131. *See* Ruben Izgelov, *Biden's Affordable Housing Plan Won't Make Much of a Dent*, BARRON'S (Nov. 19, 2021, 5:00 AM), https://www.barrons.com/articles/bidens-affordable-housing-plan-wont-make-much-of-a-dent-51637266402.
132. *See id.*
133. *See* Andrea Shalal, *White House Tackles Housing Shortage with Plan for 100,000 Affordable Homes*, REUTERS (Sept. 1, 2021), https://www.reuters.com/world/us/white-house-taking-steps-create-sell-100000-affordable-homes-2021-08-31.
134. Evelyn Hildebrand, *Incentive, Entitlement, and the Ineffective Subsidization of the Housing Market*, 18 AVE MARIA L. REV. 136, 137 (2020).
135. *See* Izgelov, *supra* note 135.

time.[136] Put simply, President Biden's approach has the right intentions, but it may fall short due to the limitations of its scope and the current realities of the market.

B. The Feasibility of Property Tax Caps as a Solution

Property tax caps are another potential solution to curb housing prices and allow average Americans seeking to buy homes to have a chance at doing so. Caps on property tax have the effect of easing rising house prices for buyers.[137] This is done by the tax caps preventing property taxes from rising through rising property assessments as house prices climb.[138] This method protects homeowners by preventing them from being forced out of their homes by not being able to afford the rising taxes,[139] which in turn prevents those houses from reentering the market at a higher, less affordable price.

This type of policy is exemplified by California's Proposition 13,[140] which was enacted in the 1970s during a similar, tumultuous time for people looking to buy homes in an era of rampant inflation.[141] Proposition 13, for example, "mandates a property tax of one percent, requires that properties be assessed at market value at the time of sale, and allows assessments to rise by no more than two percent per year until the next sale."[142] In effect, if the property value rises by more than two percent, the owner of the property essentially profits from this because their property is paying less in taxes than they would on another property of the same value.[143]

However, a property tax cap also has its criticisms as to whether it would be an effective solution to the current problems Americans face in their prospects for owning their own property. A major criticism of policies like Proposition 13 is that it disincentivizes development and adding more housing,[144] which would be the way to increase the supply of houses and offset some of the increasing prices that occur when demand increases. As mentioned earlier, there is clearly a major deficit of affordable housing,[145] so proposed solutions that would disincentivize building more homes to fill that need wouldn't be able to satisfy the portion of the issue regarding prospective homeowners, despite existing homeowners enjoying a profit of sorts.

136. *See id.*
137. *See* Adam A. Millsap, *Treating Housing as Investment is a Bad Idea for Homeowners and Hurts the Economy*, FORBES (Feb. 28, 2020, 1:57 PM), https://www.forbes.com/sites/adammillsap/2020/02/28/treating-housing-as-investment-is-a-bad-idea-for-homeowners-and-hurts-the-economy/?sh=67bd586e59ce.
138. *See id.*
139. *See id.*
140. *See id.*
141. *See generally* Leslie Kramer, *How the Great Inflation of the 1970s Happened*, INVESTOPEDIA, https://www.investopedia.com/articles/economics/09/1970s-great-inflation.asp#:~:text=The%201970s%20saw%20some%20of,this%20decade%20of%20high%20inflation (last updated May 26, 2022) (discussing that the "Great Inflation" hurt many individuals and ruined many businesses).
142. Les Picker, *The Lock-in Effect of California's Proposition 13*, NAT'L BUREAU OF ECON. RSCH. (Apr. 2005), https://www.nber.org/digest/apr05/lock-effect-californias-proposition-13.
143. *See id.*
144. *See* Millsap, *supra* note 141.
145. *See* Izgelov, *supra* note 135.

C. State Corporate-Owned Farmland Laws as a Potential Solution for the Farmland Market on a National Scale

With regard to the farmland angle of the overall issue, the main policy proposal in place at the federal level seeks to restrict foreign ownership of American farmland, but corporate farming laws exist in many states that restrict domestic corporate investors as well. Currently, six states have outright bans on foreign-owned farmland: Hawaii, Iowa, Minnesota, Mississippi, North Dakota, and Oklahoma.[146] Previously, Missouri had an outright ban on foreign farmland ownership, but that law has since bumped the threshold up, allowing up to 1% of Missouri farmland to be owned by foreign interests.[147] However, amid recent national concerns over foreign interest staking claim over American farmland and the food supply, Missouri legislators have renewed the campaign to knock the threshold back down to no foreign-owned land allowed.[148] Currently, the Agricultural Foreign Investment Disclosure Act ("AFIDA") requires that foreign entities who own American agricultural land report those holdings annually to the USDA.[149]

As far as limits on corporate ownership of farmland go, the policy results vary from state to state, and nine states have statutes or constitutional amendments that prohibit or limit corporate farming: Iowa, Kansas, Minnesota, Missouri, Nebraska, North Dakota, Oklahoma, South Dakota, and Wisconsin.[150] The main purpose of these laws is to protect family farms from the threats of larger, corporate-owned and operated farms.[151] These laws usually include provisions such as "a general prohibition on corporate farming activities, set out certain exemptions to the general prohibition, and provide a legal mechanism for forcing corporations to divest ownership of land held in violation of the law."[152] Some corporate farming laws exempt cooperative associations from their restrictions, provided certain conditions are satisfied."[153]

Corporate farming laws have come under fire though from a variety of challenges. The U.S. Supreme Court and several circuit courts have heard cases that challenge these laws on constitutional grounds, including challenges claiming violations of the Equal Protection Clause, the Due Process Clause, and the Privileges and Immunities Clause.[154] While courts consistently upheld these laws in the 20th century, recent years have shown they are not invincible.[155] For example, in 2003, the Eight Circuit struck down a voter-approved corporate farming law amendment to the South Dakota constitution for violating the "Dormant" Commerce Clause because of the law's discriminatory purpose to out-of-state corporations and a

146. *See* Johnathan Hettinger, *Efforts to Restrict Foreign Ownership of US Farmland Grow*, AP NEWS (June 9, 2019), https://apnews.com/article/e541895e692545ee80d0fc609cf40011.
147. *See id.*
148. *See id.*
149. *See Economic and Policy Analysis*, USDA FARM SERV. AGENCY, https://www.fsa.usda.gov/FSA/webapp?area=home&subject=ecpa&topic=afa (last modified Nov. 4, 2014, 9:17 AM).
150. *Corporate Farming Laws—An Overview*, THE NAT'L AGRIC. L. CTR., https://nationalaglaw-center.org/overview/corporatefarminglaws (last visited Apr. 8, 2022).
151. *Id.*
152. *Id.*
153. *Id.*
154. *Id.*
155. *Id.*

failure to show that less-discriminatory alternatives could not have achieve the state's interest.[156] The next year, the Eighth Circuit struck down a similar Iowa law for also violating the dormant Commerce Clause for being discriminatory against interstate commerce and being facially discriminatory.[157]

Thus, corporate farming laws aim directly at the investment issue in farmland head-on but are still subject to the risk of being stuck down on constitutional grounds. Ultimately, the U.S. Supreme Court may have to weigh in to decide finally whether such laws comport with the Commerce Clause and other provisions of the U.S. Constitution since the current precedent on the matter is varied at the federal appellate and state levels. Foreign investors are being targeted because there is a concern that they are abusing the current rules by buying farmland through American companies they have bought, like Chinese-owned Smithfield foods.[158] However, strictly targeting investors from a nation such as China, in the interest of protecting the American food supply from a geopolitical rival, may not address the whole problem, considering the large number of investors from a plethora of nations who own U.S. agricultural land, many of which are friendly with the United States.[159] Hence, there are several challenges to implementing effective polices to protect ordinary farmers from both American and foreign investors looking to jump into the rising farmland market.

D. The Nuclear Option: A Cap on Investor Acquisitions

Lastly, a cap on investor acquisitions on houses and farmland, while likely subject to heavy scrutiny for several reasons, may be a solution if the alternatives outlined above fail to be implemented correctly and enforced effectively. While property law doctrines like eminent domain and zoning are quite different from limiting the amount of property an entity can acquire, these too were once concepts that likely would not fit within the classical views of property rights the Founders envisioned for the United States. It was earlier noted in this article that such a limitation on property acquisition would seem patently contrary to the basic principles of Americanism, American property law, and free market capitalism–all bedrock principles that carried the United States and its people forward throughout our brief national history and into the present. Yet, there is a case to be made that proposing an "un-American" policy to solve this predatory real estate investment problem will perhaps yield a "very American" result–millions of Americans having a far greater opportunity to acquire property of their own to build on and prosper just as their forefathers did.

Just as necessity now begs for a solution to real property assets like homes and farmland being bought up by investors and creating a nation of renters,[160] eminent domain and zoning laws were policies that were borne out of necessity to govern property law in the modern age. The justification for eminent domain, despite

156. S. D. Farm Bureau, Inc. v. Hazeltine, 340 F.3d 583, 597 (8th Cir. 2003).
157. Smithfield Foods, Inc. v. Miller, 367 F.3d 1061, 1066 (8th Cir. 2004).
158. *See* McCrimmon, *supra* note 21.
159. *See* U.S. DEP'T OF AGRIC., *supra* note 118.
160. *See generally* Dan Wenner, *America: A Rentership Nation*, FORBES (Apr. 1, 2020, 7:00 AM), https://www.forbes.com/sites/forbesrealestatecouncil/2020/04/01/america-a-rentership-nation/?sh=29bf7c252287 (discussing that renting is trending upward and homeownership has trended downward in America).

depriving private individuals their property rights by taking their property for public use,[161] is that it provides land for infrastructure that benefits the public via roads, railroads, navigable waters, etc.[162] Although the benefits of eminent domain appear to outweigh the costs, it still gains heavy criticism despite being a common policy in America since the late 19th century.[163] Mainly, eminent domain receives heat because its use by government often takes private property from individual owners, and it ends up in the hands of other private entities.[164] Also, the aspect of eminent domain that provides that the property owner is justly compensated is misleading, because it assumes that such negotiations for value occur between a willing buyer, the government, and willing seller, the owner.[165] However, eminent domain is utilized when the property owner is unwilling to sell, so the government determines value from the standpoint of a "phantom seller," who is treated no differently from any other disinterested buyer and that means that the actual property owner doesn't get to negotiate the value of their property based on their subjective value of it.[166] Thus, eminent domain steps on the principle of a universal property right,[167] which was a cornerstone of the Founders' goals for the United States

Zoning laws, despite limiting how private property owners may use their property, help local governments "promote the health, safety, morals, convenience, order, prosperity and general welfare of the community."[168] Zoning is not free from criticism either. Problems with zoning that get pointed out include the fact that they restrict residential mobility and that they restrict individuals' use of their own property.[169] Also, zoning often inadequately accounts for the actual pace of change in communities and leaves property to be a "battleground" where public officials try to balance competing goals and figure out how the property should be used for the good of the public, regardless of the owner's rights.[170]

Thus, it seems that these types of property laws, although contrary to the concept of unfettered property rights and ownership that was so important to the founding of the United States, were allowed and are now commonplace despite criticisms of how they actually apply and their real effects on property owners. For limitations on the amount of property that investors can buy off of the housing and farmland markets and their effect of raising prices through increased demand, perhaps the interest of preserving opportunities to acquire affordable homes and land for the ordinary public outweighs the rights of these investors in their business practices.

---

161. *See generally History of the Federal Use of Eminent Domain*, U.S. DEP'T OF JUST., https://www.justice.gov/enrd/history-federal-use-eminent-domain (last updated Jan. 24, 2022) (explaining that eminent domain has traditionally been used to facilitate transportation, supply water, construct public buildings, and aid in defense readiness).
162. *See id.*
163. *See id.*
164. *See* Adam Millsap, *The Injustice of Eminent Domain*, US NEWS (Nov. 17, 2015), https://www.usnews.com/opinion/economic-intelligence/2015/11/17/the-injustice-of-eminent-domain#:~:text=The%20use%20of%20eminent%20domain%20exposes%20an%20uncomfortable%20truth%20in,were%20prior%20to%20losing%20it.
165. *See id.*
166. *See id*.
167. *See id.*
168. *See What is "Zoning" and Why is it Important*, TENN. MUN. LEAGUE, https://www.tml1.org /sites/default/files/tml/pdf/What_is_Zoning.pdf (last visited Apr. 8, 2022).
169. *See* Christopher Serkin, *The Wicked Problem of Zoning*, 73 VAND. L. REV. 1879, 1879–80 (2020).
170. *See id.* at 1908.

However, such a proposal should be careful to consider that implementing a policy that is too heavy-handed may dissuade developers if their customary dealings with corporate investors are greatly impacted. For instance, the housing crisis likely requires millions of homes and residential units to be built, and the best way to do that is to incentivize institutions and large-scale builders to produce, which would likely require favorable policies to them that cut red tape, reduce costs, and provide other support.[171] Also, consider the economic impact that investments in real estate provide, such as millions of jobs and hundreds of billions of dollars in personal earnings.[172] It is hardly favorable to secure housing for millions of working-class Americans just to hit them hard by potentially taking so many jobs and earnings opportunities, which may leave the U.S. in favor of overseas investments and jobs if recent history serves as a lesson.

E. While the Success of Each Proposed Solution is Uncertain, Necessity is Certain

If anything is certain about this scenario, it is that a viable solution is necessary if the American Dream is still to be within reach for many Americans. Owning property is one of the surest ways people and their families can hold equity and accumulate wealth over time, and the right to do so has benefitted people in the United States since its inception. However, recent developments put this reality at risk as multiple factors are causing the housing market to see unprecedented prices and demands, and investors are buying in at scale to capitalize on potential gains from this phenomenon. Thus, less people in America today can secure both homes and farmland from the market since incredibly wealthy investment firms and individuals are buying available property en masse to beef up their portfolios. In turn, many are faced with having to rent, which is also hurting them, because increased property prices are leading to increased rent. The proposed solutions noted above seem to be a mixed bag of potential benefits and potential costs, and the next section will attempt to propose an effective solution based on them.

VI. A Proposed Solution to Save the American Dream

Protecting Americans who seek to buy their own or farmland in order to build wealth and provide for their families is an interest that is crucial to the United States. Recent economic conditions have put everyday people and their hopes of attaining the American Dream at risk because of the vast number of houses and farmland acres being swallowed up by investors who have the capital and reach to outbid and outmaneuver the relatively unsophisticated ordinary buyer in real estate transactions. It is critical that a legal solution that does more good than harm is implemented in order to protect the average American's chances at obtaining property while balancing that with the economic interests that arise out of the jobs and earnings that flow out of investments on a national scale.

171. *See* Izgelov, *supra* note 135.
172. *See generally* FNRP, *supra* note 64 (discussing how commercial real estate contributed to $396.4 billion in personal earnings and 9.2 million jobs in 2020 alone).

Ultimately, it seems that various aspects of these proposals could be effective in curbing the severity of the current investor-driven problem. There are positive aspects to each of the proposed solutions that have been discussed, but there are drawbacks to each of them. A combination of these proposals with additions may help maximize the benefits and minimize some of the potential drawbacks. In coming up with a viable solution for proposal, the best approach appears to be a combination of various proposed solutions, as well as eliminating certain provisions of the Internal Revenue Code that investors get a major advantage from. The policy that may provide the best shot at reducing that heavy impact that rampant investing in housing and farmland has on average Americans seeking to buy property off of the market is one that must follow these steps.

First, the policy should involve governmental and private coordination to build more homes to boost the supply and alleviate rising costs in the housing market. Here, federal agencies and institutional investors would cooperate to build more houses and open more market opportunities for prospective property owners by reducing the affordable housing deficit. Currently, it is important to note that almost seven million housing units are needed to even out the deficit.[173] Therefore, this action would be similar to the current Biden plan, but it would have a much larger scope and would seek to work with investors by providing funding and making the process easier and less bureaucratic for the builders. This coordination between the government and private institutions would provide for the building of several million homes and rental units to alleviate supply issues in the housing market.

Second, this policy would implement provisions similar to various state laws that pertain to foreign and corporate investors regarding farmland, but in the housing context. As a result, enforceable rules would be implemented to prevent the predatory investment practices that are ravaging the housing market, such as bidding unreasonably high above offer prices. Investors would have to comply with various rules that would dictate terms such as areas that investors are precluded from buying in or prohibitions on certain practices like bidding highly above market price. However, this solution would also provide for exceptions that would allow investors to participate in the market and prevent these rules from chilling investor cooperation with the government. The purpose of this step of the proposed solution is to lower the barriers of entry for average people looking to buy property, since investors currently have the financial power to foreclose many opportunities for them. With these rules in place, the playing field will be leveled for the prospective individual buyer.

Third, for protecting prospective farmland owners, the overall solution scheme would implement provisions that protect farmland from certain corporate practices, by both foreign and domestic companies, that tend to disproportionately affect and oust family farms, but on a federal level. Since the federal nature of this provision would apply to all states, it would have to comply with the Commerce Clause of the U.S. Constitution,[174] which states that, “the exercise of power by the Congress under the Commerce Clause is simply whether the activity sought to be regulated is ‘commerce which concerns more States than one’ and has a real and substantial relation to the national interest.”[175] Here, it seems quite plain that regulating

173. *See* Izgelov, *supra* note 135.
174. U.S. CONST. art. I, § 8, cl. 3.
175. Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241, 255 (1964).

domestic and foreign corporate practices in the investment of farmland on a national level would concern multiple states, having a strong relation to the national interest in protecting family farms throughout the country.

Lastly, this solution would provide for the elimination of Internal Revenue Code § 1031. Section 1031 allows investors to make like-kind exchanges, where they can swap investment properties by selling one and acquiring another similar property within 180 days, while avoiding capital gains tax on the transaction.[176] This tax provision advantages investors because they can defer taxes on these transactions,[177] and the "like kind" standards of the IRS are relatively loose, allowing many exchanges such as apartments for raw land or exchanging land for a mall.[178] If done correctly, investors have no limit to the amount of "1031 exchanges" they can do.[179] Thus, eliminating this provision would curtail a major advantage that investors exploit to acquire valuable property without having to pay taxes up front on the transaction. The goal of this provision would be to lessen the number of properties being taken by investors, who would lose a major advantage in exchanging properties, in order for more properties to stay open for everyday people who are looking to buy.

For implementing the proposed regulations above, Congress should combine these proposed provisions into a legislative act. The Dodd-Frank Act, which was implemented by Congress in 2010 in response to the 2008 Financial Crisis, provides an example of a similarly structured economic reform policy.[180] The act established various government agencies to enforce its provisions and prevent another financial crisis in the future.[181] Like the Dodd-Frank Act, this solution could create various entities to carry out the monitoring and enforcement of its regulations. Thus, Congress could implement the proposed solution here through the standard legislative process that it carries out.

Implementing a federal policy that follows similar guidelines will provide better protection and better options for everyday people looking to stake their claim in the American Dream by buying homes and land. The stakes are too high to allow hyper-capitalization of real estate markets be the "straw that broke the camel's back", especially when the "camel" here is the working people of America. In order to avoid the drastic socioeconomic reshaping of the United States into a renter society with an even worse wealth, we must get in front of that consequence, which is being brought on by massive investors flooding into the housing and farmland markets and pushing out the average American buyer. The proposed solution from this article is a way to do that, and it is a step in the right direction back to an America where people can build wealth and have a home for their family in pursuit of the American Dream.

---

176. *See* 26 U.S.C. § 1031.
177. *See* Robert W. Wood, *1031 Exchange Rules: What You Need to Know*, INVESTOPEDIA, https://www.investopedia.com/financial-edge/0110/10-things-to-know-about-1031-exchanges.aspx (last updated Jul. 19, 2022).
178. *See id.*
179. *See id.*
180. *See* Adam Hayes, *Dodd-Frank Wall Street Reform and Consumer Protection Act*, INVESTOPEDIA, https://www.investopedia.com/terms/d/dodd-frank-financial-regulatory-reform-bill.asp (last updated Feb. 7, 2022).
181. *See id.*