CASES ADJUDGED

IN THE

SUPREME COURT OF THE UNITED STATES

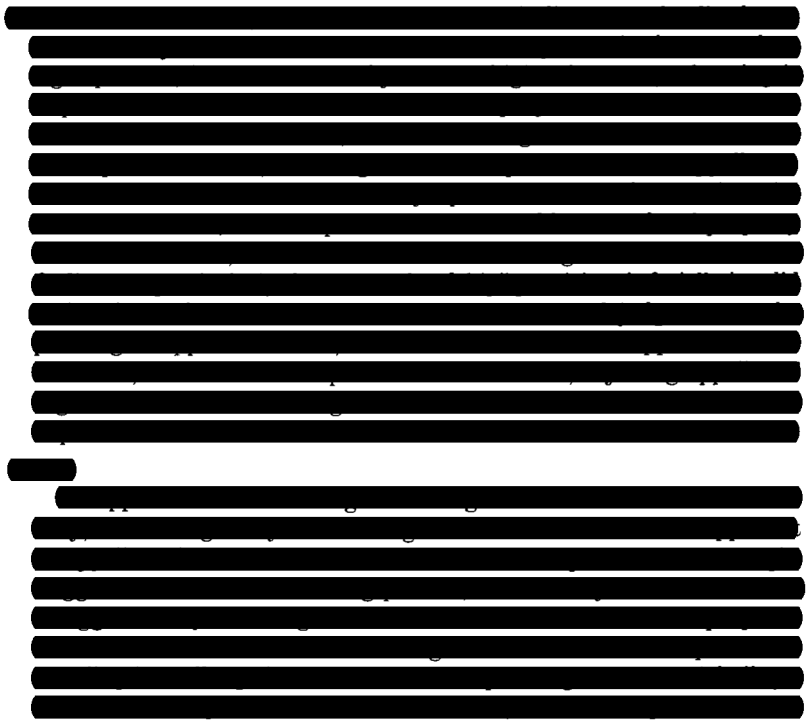
AT

OCTOBER TERM, 1987

PENNELL ET AL. *v.* CITY OF SAN JOSE ET AL.

APPEAL FROM THE SUPREME COURT OF CALIFORNIA

No. 86-753. Argued November 10, 1987—Decided February 24, 1988



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REHNQUIST, C. J., delivered the opinion of the Court, in which BRENNAN, WHITE, MARSHALL, BLACKMUN, and STEVENS, JJ., joined. SCALIA, J., filed an opinion concurring in part and dissenting in part, in which O'CONNOR, J., joined, *post*, p. 15. KENNEDY, J., took no part in the consideration or decision of the case.

Harry D. Miller argued the cause for appellants. With him on the briefs were *Burch Fitzpatrick* and *Gary E. Rosenberg*.

Joan R. Gallo argued the cause for appellees. With her on the brief was *George Rios*.*

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*Briefs of *amici curiae* urging reversal were filed for the California Association of Realtors by *William M. Pfeiffer;* for the National Apartment Association et al. by *Jon D. Smock, Wilbur H. Haines III,* and *Jeffrey J. Gale;* for the National Association of Realtors by *William D. North;* for the National Multi Housing Council by *Lawrence B. Simons* and *Michael E. Fine;* for the Rent Stabilization Association of New York City, Inc., et al. by *Erwin N. Griswold;* and for the Washington Legal Foundation by *Daniel J. Popeo, Paul D. Kamenar,* and *Todd Natkin.*

Briefs of *amici curiae* urging affirmance were filed for the American Civil Liberties Union et al. by *John A. Powell, Steven R. Shapiro, Helen Hershkoff, Paul L. Hoffman,* and *Mark Rosenbaum;* for the American Federation of Labor and Congress of Industrial Organizations by *Robert M. Weinberg* and *Laurence Gold;* for the Asian Law Alliance et al. by *Brenton Rogozen;* for the Center for Constitutional Rights by *Frank E. Deale;* for the National Housing Law Project by *David B. Bryson;* for the National Institute of Municipal Law Officers by *William I. Thornton, Jr., Roger F. Cutler, Roy D. Bates,* and *William H. Taube;* and for the U. S. Conference of Mayors et al. by *Benna Ruth Solomon* and *H. Bartow Farr III.*

Briefs of *amici curiae* were filed for the city of Santa Monica et al. by *Joseph Lawrence, Karl M. Manheim, Joel M. Levy, Hadassa K. Gilbert, Manuela Albuquerque, Raymond E. Ott, Mary Jo Levinger, Marc G. Hynes, Jayne W. Williams, K. Duane Lyders, Louise H. Renne, Roger T. Picquet, Steven A. Amerikaner, Mark G. Sellers,* and *John M. Powers;* for the Competitive Enterprise Institute by *Sam Kazman;* and for the National Association of Home Builders et al. by *Gus Bauman.*

CHIEF JUSTICE REHNQUIST delivered the opinion of the Court.

This case involves a challenge to a rent control ordinance enacted by the city of San Jose, California, that allows a hearing officer to consider, among other factors, the "hardship to a tenant" when determining whether to approve a rent increase proposed by a landlord. Appellants Richard Pennell and the Tri-County Apartment House Owners Association sued in the Superior Court of Santa Clara County seeking a declaration that the ordinance, in particular the "tenant hardship" provisions, are "facially unconstitutional and therefore . . . illegal and void." The Superior Court entered judgment on the pleadings in favor of appellants, sustaining their claim that the tenant hardship provisions violated the Takings Clause of the Fifth Amendment, as made applicable to the States by the Fourteenth Amendment. The California Court of Appeal affirmed this judgment, 154 Cal. App. 3d 1019, 201 Cal. Rptr. 728 (1984), but the Supreme Court of California reversed, 42 Cal. 3d 365, 721 P. 2d 1111 (1986), each by a divided vote. The majority of the Supreme Court rejected appellants' arguments under the Takings Clause and the Equal Protection and Due Process Clauses of the Fourteenth Amendment; the dissenters in that court thought that the tenant hardship provisions were a "forced subsidy imposed on the landlord" in violation of the Takings Clause. *Id.*, at 377, 721 P. 2d, at 1119. On appellants' appeal to this Court we postponed consideration of the question of jurisdiction, 480 U. S. 905 (1987), and now having heard oral argument we affirm the judgment of the Supreme Court of California.

The city of San Jose enacted its rent control ordinance (Ordinance) in 1979 with the stated purpose of

> "alleviat[ing] some of the more immediate needs created by San Jose's housing situation. These needs include but are not limited to the prevention of excessive and unreasonable rent increases, the alleviation of undue hard-

> ships upon individual tenants, and the assurance to landlords of a fair and reasonable return on the value of their property." San Jose Municipal Ordinance 19696, § 5701.2.[1]

At the heart of the Ordinance is a mechanism for determining the amount by which landlords subject to its provisions may increase the annual rent which they charge their tenants. A landlord is automatically entitled to raise the rent of a tenant in possession[2] by as much as eight percent; if a tenant objects to an increase greater than eight percent, a hearing is required before a "Mediation Hearing Officer" to determine whether the landlord's proposed increase is "reasonable under the circumstances." The Ordinance sets forth a number of factors to be considered by the hearing officer in making this determination, including "the hardship to a tenant." § 5703.28(c)(7). Because appellants concentrate their attack on the consideration of this factor, we set forth the relevant provision of the Ordinance in full:

> "5703.29. Hardship to Tenants. In the case of a rent increase or any portion thereof which exceeds the standard set in Section 5703.28(a) or (b), then with respect to such excess and whether or not to allow same to be part of the increase allowed under this Chapter, the Hearing Officer shall consider the economic and financial hardship imposed on the present tenant or tenants of the unit or units to which such increases apply. If, on balance, the Hearing Officer determines that the proposed increase

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[1] In order to be consistent with the decisions below, we refer throughout this opinion to the sections of the Ordinance as originally designated. We note, however, that the San Jose Municipal Code has recently been recodified and the Ordinance now appears at Chapter 17.23 of the new Code.

[2] Under § 5703.3, the Ordinance does not apply to rent or rent increases for new rental units first rented after the Ordinance takes effect, § 5703.3 (a), to the rental of a unit that has been voluntarily vacated, § 5703.3(b)(1), or to the rental of a unit that is vacant as a result of eviction for certain specified acts, § 5703.3(b)(2).

> constitutes an unreasonably severe financial or economic hardship on a particular tenant, he may order that the excess of the increase which is subject to consideration under subparagraph (c) of Section 5703.28, or any portion thereof, be disallowed. Any tenant whose household income and monthly housing expense meets [certain income requirements] shall be deemed to be suffering under financial and economic hardship which must be weighed in the Hearing Officer's determination. The burden of proof in establishing any other economic hardship shall be on the tenant."

If either a tenant or a landlord is dissatisfied with the decision of the hearing officer, the Ordinance provides for binding arbitration. A landlord who attempts to charge or who receives rent in excess of the maximum rent established as provided in the Ordinance is subject to criminal and civil penalties.

Before we turn to the merits of appellants' contentions we consider the claim of appellees that appellants lack standing to challenge the constitutionality of the Ordinance. The original complaint in this action states that appellant Richard Pennell "is an owner and lessor of 109 rental units in the City of San Jose." Appellant Tri-County Apartment House Owners Association (Association) is said to be "an unincorporated association organized for the purpose of representing the interests of the owners and lessors of real property located in the City of San Jose." App. 2–3. The complaint also states that the real property owned by appellants is "subject to the terms of" the Ordinance. But, appellees point out, at no time did appellants allege that either Pennell or any member of the Association has "hardship tenants" who might trigger the Ordinance's hearing process, nor did they specifically allege that they have been or will be aggrieved by the determination of a hearing officer that a certain proposed rent increase is unreasonable on the ground of tenant hardship. As appellees put it, "[a]t this point in time, it is speculative"

whether any of the Association's members will be injured in fact by the Ordinance's tenant hardship provisions. Thus, appellees contend, appellants lack standing under either the test for individual standing, see, *e. g.*, *Valley Forge Christian College* v. *Americans United for Separation of Church & State, Inc.*, 454 U. S. 464, 472 (1982) (individual standing requires an "'actual injury redressable by the court'"), or the test for associational standing, see *Hunt* v. *Washington Apple Advertising Comm'n*, 432 U. S. 333, 343 (1977) (an association has standing on behalf of its members only when "its members would otherwise have standing to sue in their own right").[3]

We must keep in mind, however, that "application of the constitutional standing requirement [is not] a mechanical exercise," *Allen* v. *Wright*, 468 U. S. 737, 751 (1984), and that when standing is challenged on the basis of the pleadings, we "accept as true all material allegations of the complaint, and . . . construe the complaint in favor of the complaining party," *Warth* v. *Seldin*, 422 U. S. 490, 501 (1975); see also *Gladstone, Realtors* v. *Village of Bellwood*, 441 U. S. 91, 109 (1979). Here, appellants specifically alleged in their complaint that appellants' properties are "subject to the terms of" the Ordinance, and they stated at oral argument that the Association represents "most of the residential unit owners in the city and [has] many hardship tenants," Tr. of Oral Arg. 42; see also *id.*, at 7; Reply Brief for Appellants 2.

[3] Our cases also impose two additional requirements for associational or representational standing: the interests the organization seeks to protect must be "germane to the organization's purpose," *Hunt*, 432 U. S., at 343, and "neither the claim asserted nor the relief requested requires the participation of individual members in the lawsuit," *ibid.* See also *Automobile Workers* v. *Brock*, 477 U. S. 274, 281–282 (1986). Both of these requirements are satisfied here. The Association was "organized for the purpose of representing the interests of the owners and lessors of real property" in San Jose in this lawsuit, App. 3, and the facial challenge that the Association makes to the Ordinance does not require the participation of individual landlords.

Accepting the truth of these statements, which appellees do not contest, it is not "unadorned speculation," *Simon* v. *Eastern Kentucky Welfare Rights Organization*, 426 U. S. 26, 44 (1976), to conclude that the Ordinance will be enforced against members of the Association. The likelihood of enforcement, with the concomitant probability that a landlord's rent will be reduced below what he or she would otherwise be able to obtain in the absence of the Ordinance, is a sufficient threat of actual injury to satisfy Art. III's requirement that "[a] plaintiff who challenges a statute must demonstrate a realistic danger of sustaining a direct injury as a result of the statute's operation or enforcement." *Babbitt* v. *Farm Workers*, 442 U. S. 289, 298 (1979).[4]

This said, we recognize that the record in this case leaves much to be desired in terms of specificity for purposes of determining the standing of appellants to challenge this Ordinance. Undoubtedly this is at least in part a reflection of the fact that the case originated in a state court where Art. III's proscription against advisory opinions may not apply. We strongly suggest that in future cases parties litigating in this Court under circumstances similar to those here take pains to supplement the record in any manner necessary to enable us to address with as much precision as possible any question of standing that may be raised.

Turning now to the merits, we first address appellants' contention that application of the Ordinance's tenant hardship provisions violates the Fifth and Fourteenth Amend-

[4] Appellees also argue that Pennell lacks standing individually because in early 1987 he sold the properties he owned at the time the complaint in this action was filed. See Brief for Appellees 8. In a declaration submitted to the Court, Pennell admits that he sold these properties, but states that he recently repurchased and now owns one of the apartment buildings in San Jose that he formerly owned. Declaration of Richard Pennell ¶ 7. That property was and still is "subject to the Ordinance." *Id.*, ¶ 8. Because we conclude that the Association has standing and that therefore we have jurisdiction over this appeal, we find it unnecessary to decide whether Pennell's sale and repurchase of the property affects his standing here.

ments' prohibition against taking of private property for public use without just compensation. In essence, appellants' claim is as follows: § 5703.28 of the Ordinance establishes the seven factors that a hearing officer is to take into account in determining the reasonable rent increase. The first six of these factors are all objective, and are related either to the landlord's costs of providing an adequate rental unit, or to the condition of the rental market. Application of these six standards results in a rent that is "reasonable" by reference to what appellants contend is the only legitimate purpose of rent control: the elimination of "excessive" rents caused by San Jose's housing shortage. When the hearing officer then takes into account "hardship to a tenant" pursuant to § 5703.28(c)(7) and reduces the rent below the objectively "reasonable" amount established by the first six factors, this additional reduction in the rent increase constitutes a "taking." This taking is impermissible because it does not serve the purpose of eliminating excessive rents—that objective has already been accomplished by considering the first six factors—instead, it serves only the purpose of providing assistance to "hardship tenants." In short, appellants contend, the additional reduction of rent on grounds of hardship accomplishes a transfer of the landlord's property to individual hardship tenants; the Ordinance forces private individuals to shoulder the "public" burden of subsidizing their poor tenants' housing. As appellants point out, "[i]t is axiomatic that the Fifth Amendment's just compensation provision is 'designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.'" *First English Evangelical Lutheran Church of Glendale* v. *County of Los Angeles*, 482 U. S. 304, 318–319 (1987) (quoting *Armstrong* v. *United States*, 364 U. S. 40, 49 (1960)).

We think it would be premature to consider this contention on the present record. As things stand, there simply is no evidence that the "tenant hardship clause" has in fact ever

been relied upon by a hearing officer to reduce a rent below the figure it would have been set at on the basis of the other factors set forth in the Ordinance. In addition, there is nothing in the Ordinance requiring that a hearing officer in fact reduce a proposed rent increase on grounds of tenant hardship. Section 5703.29 does make it mandatory that hardship be considered—it states that "the Hearing Officer *shall* consider the economic hardship imposed on the present tenant"—but it then goes on to state that if "the proposed increase constitutes an unreasonably severe financial or economic hardship . . . he *may* order that the excess of the increase" be disallowed. § 5703.29 (emphasis added). Given the "essentially ad hoc, factual inquir[y]" involved in the takings analysis, *Kaiser Aetna* v. *United States*, 444 U. S. 164, 175 (1979), we have found it particularly important in takings cases to adhere to our admonition that "the constitutionality of statutes ought not be decided except in an actual factual setting that makes such a decision necessary." *Hodel* v. *Virginia Surface Mining & Reclamation Assn., Inc.*, 452 U. S. 264, 294–295 (1981). In *Virginia Surface Mining*, for example, we found that a challenge to the Surface Mining Control and Reclamation Act of 1977, 91 Stat. 447, 30 U. S. C. § 1201 *et seq.*, was "premature," 452 U. S., at 296, n. 37, and "not ripe for judicial resolution," *id.*, at 297, because the property owners in that case had not identified any property that had allegedly been taken by the Act, nor had they sought administrative relief from the Act's restrictions on surface mining. Similarly, in this case we find that the mere fact that a hearing officer is enjoined to consider hardship to the tenant in fixing a landlord's rent, without any showing in a particular case as to the consequences of that injunction in the ultimate determination of the rent, does not present a sufficiently concrete factual setting for the adjudication of the takings claim appellants raise here. Cf. *CIO* v. *McAdory*, 325 U. S. 472, 475–476 (1945) (declining to consider the validity of a state statute when the record did not

show that the statute would ever be applied to any of the petitioner's members).[5]

Appellants also urge that the mere provision in the Ordinance that a hearing officer may *consider* the hardship of the tenant in finally fixing a reasonable rent renders the Ordinance "facially invalid" under the Due Process and Equal Protection Clauses, even though no landlord ever has its rent diminished by as much as one dollar because of the application of this provision. The standard for determining whether a state price-control regulation is constitutional under the Due Process Clause is well established: "Price control is 'unconstitutional . . . if arbitrary, discriminatory, or demonstrably irrelevant to the policy the legislature is free to adopt . . . .'" *Permian Basin Area Rate Cases*, 390 U. S. 747, 769–770 (1968) (quoting *Nebbia* v. *New York*, 291 U. S. 502, 539 (1934)). In other contexts we have recognized that the government may intervene in the marketplace to regulate rates or prices that are artificially inflated as a result of the existence of a monopoly or near monopoly, see, *e. g.*, *FCC* v. *Florida Power Corp.*, 480 U. S. 245, 250–254 (1987) (approving limits on rates charged to cable companies for access to telephone poles); *FPC* v. *Texaco Inc.*, 417 U. S. 380, 397–398 (1974) (recognizing that federal regulation of the nat-

[5] For this reason we also decline to address appellants' contention that application of § 5703.28(c)(7) to reduce an otherwise reasonable rent increase on the basis of tenant hardship violates the Fourteenth Amendment's due process and equal protection requirements. See *Hodel* v. *Indiana*, 452 U. S. 314, 335–336 (1981) (dismissing as "premature" a due process challenge to the civil penalty provision of the Surface Mining Act because "appellees have made no showing that they were ever assessed civil penalties under the Act, much less that the statutory prepayment requirement was ever applied to them or caused them any injury").

Appellants and several *amici* also argue that the Ordinance's combination of lower rents for hardship tenants and restrictions on a landlord's power to evict a tenant amounts to a physical taking of the landlord's property. We decline to address this contention not only because it was raised for the first time in this Court, but also because it, too, is premised on a hearing officer's actually granting a lower rent to a hardship tenant.

ural gas market was in response to the threat of monopoly pricing), or a discrepancy between supply and demand in the market for a certain product, see, *e. g.*, *Nebbia* v. *New York*, *supra*, at 530, 538 (allowing a minimum price for milk to offset a "flood of surplus milk"). Accordingly, appellants do not dispute that the Ordinance's asserted purpose of "prevent-[ing] excessive and unreasonable rent increases" caused by the "growing shortage of and increasing demand for housing in the City of San Jose," § 5701.2, is a legitimate exercise of appellees' police powers.[6] Cf. *Block* v. *Hirsh*, 256 U. S. 135, 156 (1921) (approving rent control in Washington, D. C., on the basis of Congress' finding that housing in the city was "monopolized"). They do argue, however, that it is "arbitrary, discriminatory, or demonstrably irrelevant," *Permian Basin Area Rate Cases*, *supra*, at 769–770, for appellees to attempt to accomplish the additional goal of reducing the burden of housing costs on low-income tenants by requiring that "hardship to a tenant" be considered in determining the amount of excess rent increase that is "reasonable under the circumstances" pursuant to § 5703.28.[7] As appellants put it, "[t]he objective of alleviating individual tenant hardship is . . . not a 'policy the legislature is free to adopt' in a rent control ordinance." Reply Brief for Appellants 16.

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[6] Appellants do not claim, as do some *amici*, that rent control is *per se* a taking. We stated in *Loretto* v. *Teleprompter Manhattan CATV Corp.*, 458 U. S. 419 (1982), that we have "consistently affirmed that States have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular without paying compensation for all economic injuries that such regulation entails." *Id.*, at 440 (citing, *inter alia*, *Bowles* v. *Willingham*, 321 U. S. 503, 517–518 (1944)). And in *FCC* v. *Florida Power Corp.*, 480 U. S. 245 (1987), we stated that "statutes regulating the economic relations of landlords and tenants are not *per se* takings." *Id.*, at 252. Despite *amici*'s urgings, we see no need to reconsider the constitutionality of rent control *per se*.

[7] As we noted above, see n. 5, *supra*, to the extent that appellants' due process argument is based on the claim that the Ordinance forces landlords to subsidize individual tenants, that claim is premature and not presented by the facts before us.

We reject this contention, however, because we have long recognized that a legitimate and rational goal of price or rate regulation is the protection of consumer welfare. See, *e. g.*, *Permian Basin Area Rate Cases*, *supra*, at 770; *FPC* v. *Hope Natural Gas Co.*, 320 U. S. 591, 610–612 (1944) ("The primary aim of [the Natural Gas Act] was to protect consumers against exploitation at the hands of natural gas companies"). Indeed, a primary purpose of rent control is the protection of tenants. See, *e. g.*, *Bowles* v. *Willingham*, 321 U. S. 503, 513, n. 9 (1944) (one purpose of rent control is "to protect persons with relatively fixed and limited incomes, consumers, wage earners . . . from undue impairment of their standard of living"). Here, the Ordinance establishes a scheme in which a hearing officer considers a number of factors in determining the reasonableness of a proposed rent increase which exceeds eight percent *and* which exceeds the amount deemed reasonable under either § 5703.28(a) or § 5703.28(b). The first six factors of § 5703.28(c) focus on the individual landlord—the hearing officer examines the history of the premises, the landlord's costs, and the market for comparable housing. Section 5703.28(c)(5) also allows the landlord to bring forth any other financial evidence—including presumably evidence regarding his own financial status—to be taken into account by the hearing officer. It is in only this context that the Ordinance allows tenant hardship to be considered and, under § 5703.29, "balance[d]" with the other factors set out in § 5703.28(c). Within this scheme, § 5703.28(c) represents a rational attempt to accommodate the conflicting interests of protecting tenants from burdensome rent increases while at the same time ensuring that landlords are guaranteed a fair return on their investment. Cf. *Bowles* v. *Willingham*, *supra*, at 517 (considering, but rejecting, the contention that rent control must be established "landlord by landlord, as in the fashion of utility rates"). We accordingly find that the Ordinance, which so carefully considers both the individual circumstances of the landlord and

the tenant before determining whether to allow an *additional* increase in rent over and above certain amounts that are deemed reasonable, does not on its face violate the Fourteenth Amendment's Due Process Clause.[8]

We also find that the Ordinance does not violate the Amendment's Equal Protection Clause. Here again, the standard is deferential; appellees need only show that the classification scheme embodied in the Ordinance is "rationally related to a legitimate state interest." *New Orleans* v. *Dukes*, 427 U. S. 297, 303 (1976). As we stated in *Vance* v. *Bradley*, 440 U. S. 93 (1979), "we will not overturn [a statute that does not burden a suspect class or a fundamental interest] unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature's actions were irrational." *Id.*, at 97. In light of our conclusion above that the Ordinance's tenant hardship provisions are designed to serve the legitimate purpose of protecting tenants, we can hardly conclude that it is irrational for the Ordinance to treat certain landlords differently on the basis of whether or not they have hardship tenants. The Ordinance distinguishes between landlords because doing so furthers the purpose of ensuring that individual tenants do not suffer "unreasonable" hardship; it would be inconsistent to state that hardship is a legitimate factor to be considered but then hold that appellees could not tailor the Ordinance so that only legitimate hardship cases are redressed. Cf. *Woods* v. *Cloyd W. Miller Co.*, 333 U. S. 138, 145 (1948)

[8] The consideration of tenant hardship also serves the additional purpose, not stated on the face of the Ordinance, of reducing the costs of dislocation that might otherwise result if landlords were to charge rents to tenants that they could not afford. Particularly during a housing shortage, the social costs of the dislocation of low-income tenants can be severe. By allowing tenant hardship to be considered under § 5703.28(c), the Ordinance enables appellees to "fine tune" their rent control to take into account the risk that a particular tenant will be forced to relocate as a result of a proposed rent increase.

(Congress "need not control all rents or none. It can select those areas or those classes of property where the need seems the greatest"). We recognize, as appellants point out, that in general it is difficult to say that the landlord "causes" the tenant's hardship. But this is beside the point—if a landlord does have a hardship tenant, regardless of the reason why, it is rational for appellees to take that fact into consideration under § 5703.28 of the Ordinance when establishing a rent that is "reasonable under the circumstances."

For the foregoing reasons, we hold that it is premature to consider appellants' claim under the Takings Clause and we reject their facial challenge to the Ordinance under the Due Process and Equal Protection Clauses of the Fourteenth Amendment. The judgment of the Supreme Court of California is accordingly

Affirmed.