

Article

Regulating History

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America's local historic commissions collectively wield tremendous influence over millions of privately-owned parcels of land. By reviewing rehab proposals, blocking demolitions, and mandating property maintenance, these commissions have helped to protect many of America's most beloved neighborhoods. They fill a vacuum left by federal and state governments, which

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have declined to offer robust legal protections to private historic sites.

Litigation challenging local historic decisions and press vilifying commissions for their alleged elitism, anti-environmental decisions, and general obstruction of progress have put preservation in the contemporary crosshairs. While we align with those who believe that clear-thinking commissions can successfully mediate between the past and the present for the sake of the future, we decline to wade deeply into these debates. Instead, we expose an uncomfortable truth: neither opponents nor supporters have a full grasp of local historic preservation law.

This Article peels back the curtain, revealing for the first time the broad reach and deep control of local regulation over private property and, by extension, our built heritage. The Article offers a meticulous census of over 3,500 local ordinances, comprehensively analyzes enabling authorities across all fifty states, explores the extent to which demographic and political factors correlate with local adoption, and delves deeply into the content of over 300 local ordinances. Just as importantly as this comprehensive analysis, this Article fills a gap in the sparse literature on local administrative law, using new empirical data to illuminate the commonality of particular procedural and substantive regulatory levers; the complicated dynamics between federal, state, and local governments; and the ambition and motives of local regulators.

This Article provides the first nationwide empirical basis for current debates about local historic district commissions, proving that these commissions are both surprisingly common and surprisingly influential over private property. It also offers insights with practical implications for the preservation field and theoretical implications for administrative legal theory.

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INTRODUCTION

America's most beloved neighborhoods are historic. Think New England colonials, Tucson adobes, Philadelphia rowhouses, San Francisco Victorians, and Houston bungalows. Though architecturally distinct, these neighborhoods share one thing in common: local governments regulate proposed changes to them through public commissions that conduct aesthetic reviews.

Large cities, small towns, and even rural communities adopt historic preservation laws and create commissions to administer them. Collectively, these commissions wield substantial power over millions of privately owned parcels nationally. This power—much like the power to regulate zoning, subdivision, housing standards, and nuisances—is typically exercised pursuant to state enabling acts. To date, all fifty state legislatures have granted local governments police power authority to exercise oversight over private properties with historic designations.¹ In delegating this authority, states have declined to directly control ordinary private properties.² The federal government likewise declines, instead focusing on how federal agency actions affect historic sites. Through the National Historic Preservation Act and the National Environmental Protection Act, Congress requires agencies to consider the impacts of their actions on places on or eligible for the National Register of Historic Places.³ These statutes do not require substantive protection, meaning that as

1. See *infra* Part II.A.

2. Though states have delegated their authority to exercise the powers now exercised by local historic commissions, states often do establish permitting processes for particular uses of private property, including energy-related uses, utility infrastructure, and activities with potential for environmental harm. In these regimes, designated historic properties, public and private, may receive special treatment.

3. See 54 U.S.C. § 306108 (requiring the head of a federal agency conducting an undertaking to “take into account the effect of the undertaking on any historic property”); 42 U.S.C. § 4332(C) (requiring that federal agencies prepare an impact statement when conducting “major Federal actions significantly affecting the quality of the human environment,” where the environment includes historic sites). A certain category of elite historic sites, National Historic Landmarks, can receive heightened protection in that federal agencies must “undertake such planning and actions as may be necessary to minimize harm to the landmark.” 54 U.S.C. § 306107.

long as an agency considers the action's impacts, it may still proceed with destruction or impairment of a historic resource.⁴

Local historic preservation law thus fills a vacuum left by both state and federal governments, offering the primary legal mechanism for preserving privately owned historic places. Typically, local commissioners apply standards, articulated in local ordinance or supplemental guidelines, to judge whether property owners can alter, demolish, or relocate buildings with formal historic designations.⁵ They sometimes require property owners to maintain their properties.⁶ And they sometimes determine whether property owners can evade regulation by claiming hardship.⁷ In making these decisions, commissions exercise their authority in ways that reverberate beyond the architecture of the specific building at issue. Their decisions can tremendously impact property values, the viability of particular uses, neighborhood amenities, the environment, and our ability to connect to our past.

Many value local historic commissions' defense of history and view their operation favorably, as evidenced by the proliferation of local preservation regimes. But others do not. For one thing, litigation abounds. Aggrieved property owners have hauled commissions into court on the grounds that commission decisions violate constitutional rights to due process⁸ or religious freedom.⁹ They have sued commissions for allegedly effecting un-

4. Section 4(f) of the Department of Transportation Act offers slightly more protection for historic places, though a federal agency may still destroy the historic site if there is no "prudent and feasible alternative," and harm is minimized. *See* 49 U.S.C. § 303(c).

5. *See infra* Parts III.B–C.

6. *See infra* Part III.B.

7. *See infra* Part III.D.

8. *See, e.g.,* *Maher v. City of New Orleans*, 516 F.2d 1051, 1067 (5th Cir. 1975) (rejecting property owner's due process claim that the Vieux Carré Ordinance was void for vagueness).

9. Religious freedom claims are most often brought as challenges involving state or federal constitutions or as challenges based on the federal Religious Land Use and Institutionalized Persons Act (RLUIPA) of 2000, 42 U.S.C. §§ 2000cc to 2000cc-5. *See, e.g.,* *Rector, Wardens, & Members of the Vestry of St. Bartholomew's Church v. City of New York*, 914 F.2d 348, 355–56 (2d Cir. 1990) (rejecting a church's free exercise claim against the city commission decision to deny permit to construct a tower, where landmarks laws were neutrally applied and the church was not subject to discriminatory motive or coerced in

constitutional regulatory takings by wholly or partly diminishing property value.¹⁰ They have argued that constraints on architectural expression unconstitutionally infringe on free speech.¹¹ Mostly, these aggrieved parties have lost in the courtrooms. But opponents of local preservation have been gaining in the popular press. Opinion pieces in *The New York Times*, *Forbes*, and *The Atlantic* have vilified commissions for their alleged elitism, anti-environmental decisions, and general obstruction of progress.¹² These pieces paint all commissions with the same broad brush, brandishing a single, specific decision or twisting a few facts to denounce local regulation everywhere. We align with those who believe that clear-thinking commissions can successfully mediate between the past and the present, for the sake of the future.

its religious practices); *Episcopal Student Found. v. City of Ann Arbor*, 341 F. Supp. 2d 691, 707 (E.D. Mich. 2004) (affirming local commission denial of demolition permit to religious organization catering to college students in RLUIPA challenge, where the organization failed to demonstrate a substantial burden on its religious exercise as required by RLUIPA).

10. See, e.g., *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 124, 134–35 (1978) (establishing a three-part test for identifying an unconstitutional regulatory taking and applying the test to reject property owner’s takings challenge to the New York City Landmarks Preservation Ordinance for reasons including that the property, a rail terminal, had not seen a diminution of property value and that the city’s landmarks preservation scheme applied to many different properties); *Dist. Intown Props. Ltd. P’ship v. District of Columbia*, 198 F.3d 874, 884 (D.C. Cir. 1999) (rejecting property owner’s takings claim where the local review board denied a construction permit for new construction on a parcel proposed to be subdivided); see also J. Peter Byrne, *Regulatory Takings Challenges to Historic Preservation Laws After Penn Central*, 15 *FORDHAM ENV’T L. REV.* 313, 313–14 (2004) (discussing the effects of *Penn Central*).

11. See, e.g., *Globe Newspaper Co. v. Beacon Hill Architectural Comm’n*, 100 F.3d 175, 192 (1st Cir. 1996) (rejecting a First Amendment free speech challenge by newspaper publishers and upholding local historic district guidelines on newsracks given publishers’ alternative means of communication and content-neutrality of guidelines).

12. M. Nolan Gray, *Noisy and Unsafe: Stop Fetishizing Old Homes*, *ATLANTIC* (Jan. 11, 2022), <https://www.theatlantic.com/ideas/archive/2022/01/stop-fetishizing-old-homes-new-construction-nice/621012> [<https://perma.cc/Y6V4-8B8D>]; Binyamin Appelbaum, *When Historic Preservation Hurts Cities*, *N.Y. TIMES* (Jan. 26, 2020), <https://www.nytimes.com/2020/01/26/opinion/historic-preservation-solar-panels.html> [<https://perma.cc/4PRC-VRMP>]; Adam A. Millsap, *Historic Designations Are Ruining Cities*, *FORBES* (Dec. 23, 2019), <https://www.forbes.com/sites/adammillsap/2019/12/23/historic-designations-are-ruining-cities/?sh=26fa5ea157af> [<https://perma.cc/8FE9-87BH>].

Yet rather than wade deeply into the debates about whether local regulation has value, we expose an uncomfortable truth: neither opponents nor supporters have a full grasp of the law. They don't know its scope because no one has recently counted jurisdictions that regulate historic places. They don't know the context within which these laws were adopted in the first place because no studies link demographic, property, political, or legal factors with rates of adoption.¹³ And they don't even know what local laws governing decision-making actually say. Without this information, current debates lack important context.

This Article peels back the curtain, revealing for the first time local historic regulation's broad and deep control over private property. We anticipate this research will begin to ground both litigation and popular discussion about local historic preservation law in facts. It will also fill an empirical gap in the scholarship on local administrative law, which many have found lacking. Nestor Davidson, for example, has called for empirical work on specific spheres of local-government regulation, arguing that "the voluminous literature on administrative law and practice . . . predominates at the federal level" and that legal scholars have paid "too little attention to the inner workings of local government in general."¹⁴ Such empirical work may be inherently challenging given the structural and institutional uniqueness of individual local governments, as Richard Briffault and others have observed.¹⁵ This Article takes up the call for new empirical analysis that can illuminate the commonality of particular procedural and substantive regulatory levers; the complicated dynamics between federal, state, and local governments; and the ambition and motives of local regulators.

13. We use the shorthand phrase "rates of adoption" throughout this Article to mean the percentage of local governments within a state that have adopted historic preservation laws, even though in mathematics, the term "rate" technically refers to a measurement of two different units (e.g., "miles per hour"), and here, we are only using one unit (i.e., number of local governments).

14. Nestor M. Davidson, *Localist Administrative Law*, 126 YALE L.J. 564, 570 (2017). He goes on to note that given the "vast number of local governments – nearly 90,000 such entities, depending on the method of counting . . . it is unsurprising that there has been so little systematic empirical engagement with local administration." *Id.* at 587 (citation omitted).

15. Richard Briffault, *Who Rules at Home?: One Person/One Vote and Local Governments*, 60 U. CHI. L. REV. 339, 341 (1993). For additional discussion on this point, see *infra* notes 108–12 and accompanying text.

Part I exposes the scope of local historic regulation, finding that one in nine localities—more than previously thought—legally constrain the rehabilitation of historic places. As the only recent national census of local-government regulation of historic properties, this Article identifies over 3,500 local governments with such regulation, including counties, parishes, cities, towns, and villages. It explains the methodology used to generate this figure and calculates the rates at which local governments in each state have adopted historic preservation laws.

Delving into this census, Part II explores the relationships between historic regulation and other variables through statistical analysis of the percentage of local governments adopting historic regulations in each state. Hypothetically, correlations may exist between these rates of adoption and the content of state statutory frameworks, which impose varying restrictions on local governments' ability to designate and regulate historic sites. Surprisingly, a statistical analysis finds no relationship between rates of adoption and state statutory frameworks. This finding challenges the relevance and importance of state enabling authority in this arena. If statutory frameworks are not correlated with rates of adoption, then perhaps exogenous variables, including demographic characteristics, property characteristics, and political inclinations are. Analysis of thirteen such variables reveals a strong correlation only between rates of adoption and statewide median property values. This finding reinforces existing literature linking high property values with formal historic designation. While not proving causation, the correlations (or lack thereof) tease new questions about the underlying legal framework of and rationale for local regulation.

Drawing from the knowledge gained about statewide preservation trends, Part III documents the content of local historic regulations, using data collected from a representative sample of over three hundred jurisdictions. It logs the types of properties regulated, the private activities regulated, standards used in reviewing applications, the availability of hardship waivers for struggling applicants, and the treatment of climate change concerns. This never-before-conducted survey reveals regulatory trends across jurisdictions, highlights tensions in the federalist system of government, and underscores a lack of progress, particularly in addressing the pressing challenge of climate change.

Part IV analyzes the empirical research revealed in Parts I, II, and III, offering three lessons about the nature and function

of local historic regulation that bear on local administrative legal theory. First, these regulations share common features, despite their independent adoption by thousands of individual local governments and despite differences in state enabling statutes. This observation supports judicial development of common-law principles for judicial review of historic commission decisions. Second, local government regulation occurs in the absence of state enabling authority in some instances, and in defiance of federal direction in other instances. Our research, finding that local governments sometimes regulate more expansively than federal agencies expect them to, implies that localities deviate from the assumption they will behave as obedient participants in our federalist system. Third, far from being laboratories of innovation, local regulators have failed to address pressing problems, including climate change and its ongoing impact on historic places. This regulatory stasis may justify strengthening states' roles in guiding local decision-making.

As more localities adopt historic preservation ordinances affecting an ever-increasing amount of private property, this Article concludes by calling for further empirical study into this important regulatory sphere.

I. SCOPE OF LOCAL HISTORIC REGULATION

Knowing the scope of local historic regulation can enrich both judicial decision-making and current debates about the impact of these regulations. This Part explains the rationale for undertaking an updated national census of local-government regulation of historic places. It outlines the methodology for the census and reveals the number of local laws as of July 2022. And it generates rates of adoption by state, figures that will be used as the basis for Part II.

A. WHY COUNT LOCAL LAWS

On April 17, 1978, the U.S. Supreme Court heard oral argument for *Penn Central Transportation Co. v. City of New York*.¹⁶ The company brought a Fifth Amendment regulatory takings

16. *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104 (1978).

challenge against the city over its Landmarks Law, adopted thirteen years earlier.¹⁷ The law established the Landmarks Preservation Commission, a public body with authority to review proposed alterations and approve appropriate designs.¹⁸ The commission rejected several applications by the company to build a Brutalist skyscraper over the Beaux Arts Grand Central Terminal.¹⁹ Approval of the skyscraper would have enabled the company to earn significant rental income from office tenants willing to pay top dollar for a prime location above the Terminal.²⁰

At oral argument, the company's attorney alleged that the denial constituted a taking because the company was "solely burdened and unbenefited" by the application of the Landmarks Law.²¹ The city's attorney replied to that point by likening the city's Landmarks Law to a "comprehensive land-use plan" encompassing over five hundred properties formally designated historic.²² He went on to argue that, accordingly, the city was "not singling out Penn Central."²³

In its decision issued two months later, the Supreme Court sided with the city.²⁴ It held that the city's historic preservation program involving hundreds of properties did not unfairly burden Penn Central, nor did the specific application of the Landmarks Law to the skyscraper proposals preclude the company

17. *Id.* at 108–09.

18. N.Y.C., N.Y., ADMIN. CODE §§ 25-301 to -322 (2023); *see id.* § 25-305 (“[I]t shall be unlawful for any person in charge of a landmark site or an improvement parcel or portion thereof located in an historic district or any part of an improvement containing an interior landmark to alter, reconstruct or demolish any improvement constituting a part of such site or constituting a part of such parcel and located within such district or containing an interior landmark, or to construct any improvement upon land embraced within such site or such parcel and located within such district, or to cause or permit any such work to be performed on such improvement or land, unless the commission has previously issued a certificate of no effect on protected architectural features, a certificate of appropriateness or a notice to proceed authorizing such work . . .”).

19. *Penn Central*, 438 U.S. at 117.

20. *Id.* at 116.

21. Transcript of Oral Argument at 13, *Penn Central*, 438 U.S. 104 (No. 77-444).

22. *Id.* at 32, 44.

23. *Id.* at 43–44.

24. *Penn Central*, 438 U.S. at 138.

from receiving a reasonable return on its investment. In affirming the exercise of local regulatory authority in this specific case, the Court affirmed the ability of local governments everywhere to similarly regulate private property to protect historic character.

Relevant to this discussion, the Court also took care to ground its decision within the context of the expanding national reach of historic preservation law. Indeed, the very first sentence of the first section of the opinion reads: “[o]ver the past 50 years, all 50 states and over 500 municipalities have enacted laws to encourage or require the preservation of buildings and areas with historic or aesthetic importance.”²⁵ The Court footnoted this sentence with citations to the only sources for information about the scope of local regulation: two 1976 publications from the National Trust for Historic Preservation presenting the 500-municipality figure.²⁶

That the Supreme Court contextualized what Professor J. Peter Byrne calls “the most important decision on historic preservation law ever rendered in the United States”²⁷ with information about the scope of local regulation confirms the need for our present census. An updated census could fortify the *Penn Central* line of regulatory takings cases, which generally uphold local historic preservation laws against challenge. Beyond takings, a census could be useful to local governments defending against “class-of-one” type equal protection challenges based on the Fourteenth Amendment, which allege government conduct uniquely burdens a single plaintiff.²⁸ If many jurisdictions have adopted similar rules, it is harder to argue that the local regime has been tailored to hurt a particular property owner. Judges can also use this census to assess the extent to which historic preservation values have been embedded in policy. Lawsuits in-

25. *Id.* at 107.

26. NAT’L TR. FOR HISTORIC PRES., A GUIDE TO STATE HISTORIC PRESERVATION PROGRAMS (1976); NAT’L TR. FOR HISTORIC PRES., DIRECTORY OF LANDMARK AND HISTORIC DISTRICT COMMISSIONS (1976).

27. J. Peter Byrne, *Penn Central in Retrospect: The Past and Future of Historic Preservation Regulation*, 33 GEO. ENV’T L. REV. 399, 400 (2021).

28. This line of cases draws from *Village of Willowbrook v. Olech*, 528 U.S. 562, 564 (2000), which sustained a “class of one” challenge against public bodies that intentionally treat the plaintiff differently from similarly situated people without a rational basis.

volving substantive due process often rest on whether government's deprivation of a person's life, liberty, or property can be justified on public policy grounds. A census showing that a substantial number of local elected bodies have chosen to adopt historic preservation ordinances can demonstrate cumulative public support of historic preservation.

These examples illustrate how this census can be used to justify local regulation, but the opposite could well be true. If over time the number of localities with historic regulation decreases, the above arguments lose their power. Moreover, as noted in Part I.B, in some states only a small fraction of localities have adopted historic preservation regulations—which may support challengers' arguments that historic preservation in those states lacks strong public support. In any event, judges can use this census to gauge the impact of their decisions on public bodies and private property owners alike.

Having an accurate, updated census²⁹ can also unlock further research to inform public debates about preservation that seem to overly rely on anecdotes. For example, several recent commentators have amplified one or two decisions by various local historic commissions to justify criticism of historic preservation broadly.³⁰ To determine whether their criticism holds true across time and geography, researchers could use the census to identify a range of jurisdictions whose decisions will be studied. As one example, researchers could interrogate critics' claims that local historic commissions fail to take climate change seriously. From the census, they could pull lists of localities vulnerable to sea level rise or wildfire to assess whether their laws and their decision-making have fortified historic places against rising threats.

29. At a minimum, an accurate count could ensure that research incorporating counts of historic preservation laws to emphasize their importance were up-to-date. For an example of an article using a prior census for this purpose, see Tad Heuer, *Living History: How Homeowners in a New Local Historic District Negotiate Their Legal Obligations*, 116 YALE L.J. 768, 772–73 (2007) (citing census numbers to explain growing interest in preservation).

30. See, e.g., sources cited *supra* note 12.

The census also creates the possibility for researchers to map regulated historic districts.³¹ While this Article surveys whether a local government has adopted historic regulation, it does not identify the amount of land actually regulated. Some local governments may regulate just a few individual properties, while others may regulate multiple neighborhoods.³² Understanding the physical reach of local historic district regulation could also help us understand its economic and social impacts. At least with this census, potential mappers know where to start the process.

Part II mines the census to address an additional avenue of inquiry: influences on local adoption of historic regulation. It explores the relationships between local-historic-regulation adoption and certain demographic characteristics, property characteristics, political leanings, and state enabling act restrictions. Future research relying on the census could study the population size, demographic characteristics, or political leanings of individual localities and more richly explain the context within which communities enact local preservation laws.

B. METHODOLOGY AND RESULTS

After offering the use case for a census of local historic preservation regulation, we turn now to the methods used for this latest census—and its results.

At first glance, counting the number of local governments with any particular kind of local regulation appears easy. But in fact, there are significant logistical barriers to any kind of local-government legal research. For state statutes, Westlaw and LexisNexis, as well as the Cornell Legal Information Institute, provide comprehensive coverage. No local-law equivalent to these databases exists for the over thirty thousand local governments

31. In 2018, the federal agency that takes the lead on historic preservation policy, the Advisory Council on Historic Preservation, convened a Digital Information Task Force that recommended increased digitization and mapping of historic resources. See *Digital Information Task Force Recommendations and Action Plan*, U.S. ADVISORY COUNCIL ON HISTORIC PRES. (2020), <https://www.achp.gov/digital-library-section-106-landing/digital-information-task-force-recommendations-and-action-plan> [<https://perma.cc/X9AM-UWVQ>].

32. Typically, an ordinance will apply to properties formally designated historic on a local, state, or national register of historic places. See *infra* Part III.A.

in the United States.³³ Instead, localities either self-publish their ordinances online or contract with private companies, such as American Legal Publishing, Municode, and eCode360, to maintain electronic copies. Given this research landscape, the easiest way to find the text of a local ordinance is to input the name of the local government and the word “ordinance” in an online search engine. If the ordinance is located and searchable, then one can use key words, such as “historic preservation.”

The prospect of conducting thirty thousand manual online searches was daunting. As an alternative starting point, the research team utilized a list published by the National Park Service of “certified local governments,” or CLGs.³⁴ Federal regulations enable each state historic preservation office to certify local governments qualified to carry out the purposes of the National Historic Preservation Act of 1966.³⁵ CLGs must demonstrate their qualifications by, among other things, designating historic sites, establishing a review process for proposed “demolitions of, changes to, or other action[s] that may affect” historic sites, and establishing an “adequate and qualified” historic preservation commission that conducts such reviews.³⁶ Qualifying CLGs receive certain benefits, including the ability to formally participate in the nomination of sites to the National Register of Historic Places and the ability to apply for grants from the federal Historic Preservation Fund.³⁷ Given these benefits, many local governments with historic regulation seek CLG status. As of June 1, 2022, the date the count “froze” for the purposes of this Article, the CLG list included 2,085 local governments.

Although each CLG must have a commission and regulate historic places, not every local government with a commission

33. *2017 Census of Governments: Organization Component Estimates, Table 3. General-Purpose Local Governments by State: Census Years 1942 to 2017 [CG1700ORG03]*, U.S. CENSUS BUREAU (Oct. 28, 2021) [hereinafter *2017 Census of Governments*], https://www2.census.gov/programs-surveys/gus/tables/2017/cog2017_cg1700org03.zip [<https://perma.cc/CK4E-JP29>].

34. See *Certified Local Governments*, NAT'L PARK SERV. [hereinafter *Certified Local Governments*], https://grantsdev.cr.nps.gov/CLG_Review/Get_All_CLG.cfm [<https://perma.cc/SK9P-ZYFL>] (showing 2,104 certified local governments along with certification dates).

35. 36 C.F.R. § 61.6(a)–(d) (2023).

36. *Id.* § 61.6(e)(1)(ii).

37. *Id.* § 61.6(f). States must provide at least 10% of their grant from the National Park Service pursuant to the federal Historic Preservation Fund to the CLGs. *Id.* § 61.6(f)(2).

and historic regulation has obtained CLG status. To identify other local governments regulating historic places, the research team consulted additional resources in all fifty states. In ten states, state governments or statewide nonprofit organizations maintained websites listing all localities with historic district regulation online. We pulled information from these websites between October and December 2020. In thirty states, we solicited and obtained unpublished lists from state historic preservation offices and statewide preservation organizations. The completion dates of these lists varied, though almost all were between 2018 and 2021. In ten states where no entity apparently maintained such a list, the research team manually reviewed a total of 4,668 local government ordinances to ascertain whether the codes incorporated historic preservation regulation.³⁸ This review took place between May and July 2022. Using this approach, we found 1,447 local governments with local historic regulation and without CLG status.³⁹ To avoid double-counting localities, we maintained a spreadsheet listing each state and the names of each locality, logging whether the locality had earned CLG status.

These methods may result in slight fuzziness at the margins. Data collection through each of the four methods—the CLG list collection, the website reviews, the unpublished list solicitation, and the manual searches—was completed at slightly different dates. The sheer volume of manual reviews in ten states may have contributed to inaccuracies, though we tried to overcome potential inaccuracies by requiring two research assistants to confirm each local-government listing from those states. Some tiny towns did not maintain a full set of ordinances or programs online, raising the possibility that their historic regulation went uncounted. There is also the possibility that the localities with laws “on the books” actually fail to have active commissions that

38. These states were Alabama, Delaware, Idaho, Kansas, Louisiana, Missouri, Montana, Oklahoma, Tennessee, and Washington.

39. For us, these numbers raise a question: why 1,447 communities meeting the most demanding criteria to become a federally recognized certified local government (namely, the establishment of historic preservation regulation) have failed to achieve certification. Perhaps this census can encourage state historic preservation offices and federal officials to fold more localities into the certification process so they can receive benefits currently only given to certified local governments.

meet regularly—in effect, a paper overcount.⁴⁰ All that said, we have consulted with many statewide preservation leaders, and none has disputed specific numbers or names of jurisdictions gathered for their states. Hopefully any inaccuracies are modest given the scope of this project.

In total, we identified 3,533 local governments (including Washington, D.C.) that we believe regulate historic properties. The list includes any type of government allowed to regulate by the applicable state enabling statute, including (variously) counties, parishes, cities, towns, and villages. Our census reflects a sevenfold increase from the 1976 number offered by the National Trust for Historic Preservation of 500 municipalities with historic regulation. Interim counts similarly showed increases. By 1998, the National Alliance of Preservation Commissions put the number of historic preservation ordinances nationwide at approximately 2,200, an over fourfold increase in two decades.⁴¹ A decade later, a National Trust publication referenced a figure of 2,300 historic district ordinances nationwide.⁴² One of these latter two figures may have over or undercounted, as it seems hard to believe that the pace of adoption jumped from just ten localities per year between 1998 and 2008 to eighty-eight localities per year between 2008 and 2022.

Regardless, the present and prior studies consistently show that the number of local historic preservation laws is increasing, and thus the number of properties regulated is similarly increasing. Local historic regulation is more common than previously thought, and we suspect it will only grow.

40. As we observe in Part III, even some certified local governments make information about their commissions impossible to find online, raising the possibility that they do not actually maintain active commissions that review proposed changes to historic properties as required by the federal certified local government program.

41. NAT'L ALL. OF PRES. COMM'NS, UNITED STATES PRESERVATION COMMISSION IDENTIFICATION PROJECT 7, 26 (1998) (archived at <https://perma.cc/X4HV-FDAL>) (identifying over 2,500 local preservation commissions, with 88% of them possessing the ability to designate historic districts via an ordinance).

42. JULIA H. MILLER, NAT'L TR. FOR HISTORIC PRES., A LAYPERSON'S GUIDE TO HISTORIC PRESERVATION LAW: A SURVEY OF FEDERAL, STATE, AND LOCAL LAWS GOVERNING HISTORIC RESOURCE PROTECTION 9 (2008).

C. RATES OF ADOPTION BY STATE

The census described in Part I.B revealed that some states had large numbers of local governments with local regulation and others had very few. For example, North Dakota, a state with over 1,700 local governments, appeared to have just eight localities with historic regulation. Meanwhile, Connecticut, with just 169 local governments, had eighty-three with historic regulation. Calculating the rates of adoption in each state—namely, the percentage of local governments that have adopted historic preservation regulations—can help illuminate the differences. (Note that the following analysis excludes the District of Columbia, which is not a state and which has a single jurisdiction with local preservation law.)

The census provided the “numerators” for calculating rates of adoption, as it collected information by state. The more difficult number to ascertain was the “denominator,” the total number of local governments in each state. The Census Bureau’s *Census of Governments* dataset counts each state’s local governments, categorizing them as municipal, township, and county governments.⁴³ In guidance issued for the public to understand these three categories, the Census Bureau explains variations in state-specific nomenclature.⁴⁴ For example, the Census Bureau includes in its lists of counties both “parish” governments in Louisiana and “boroughs” in Alaska. As another example, the Census Bureau counts as municipalities not only cities but also boroughs (except in Alaska), towns (except in the six New England states, Minnesota, New York, and Wisconsin), and villages. It also provides a list of twenty states with township governments, explaining that in eleven states, townships may overlap with municipal governments.⁴⁵

43. *2017 Census of Governments*, *supra* note 33. The *Census of Governments* also recognizes school districts and special districts, but no state allowed either of these types of local governments to enact historic district regulation.

44. *Technical Documentation: 2017 Public Use Files for State and Local Government Organization*, U.S. CENSUS BUREAU, https://www2.census.gov/programs-surveys/gus/datasets/2017/2017_gov_org_meth_tech_doc.pdf [<https://perma.cc/SSA4-D8MP>].

45. The Census Bureau lists these states indicating that the symbol “T” describes those states where townships are called “towns”: “Connecticut (T), Massachusetts (T), New Hampshire (T), Pennsylvania, Illinois, Michigan, New Jersey, Rhode Island (T), Indiana, Minnesota, New York (T), South Dakota, Kansas, Missouri, North Dakota, Vermont (T), Maine (T), Nebraska, Ohio, Wisconsin (T).” *Id.*

Sifting through these categories required care, especially as not every state authorizes the creation of all three types of local governments, and not every state permits all three types of local governments to enact historic preservation regulations. To determine the relevant number to use for the denominator in each state, we first ascertained the local governments permitted to enact historic preservation regulations in the state, and then used the *Census of Governments* to add up the relevant municipal, township, and/or county government numbers for the denominator. As one example, Alabama does not recognize township governments, only municipal and county governments. Furthermore, Alabama does not allow counties to enact land use regulations. Thus, the only type of local government used in the denominator to calculate the percentage of adoption of historic preservation regulation in Alabama is municipal governments. For all fifty states, the denominators totaled 31,421 local governments, with the numerator of 3,532 making the national overall rate of adoption 11.24%.

Using the state-specific denominators to calculate rates of adoption by state, we found great variety, as illustrated in Table 1. Hawaii had the fewest total local governments, four, all of which have some form of historic regulation. States with the next-fewest local governments were Nevada, Rhode Island, and Delaware, each with sixty or fewer local governments. Their rates of historic-regulation adoption averaged 30%. Ten states had more than one thousand local governments, with Ohio (at 2,239) and Pennsylvania (at 2,559) holding the top spots. These ten states saw rates of historic-regulation adoption of just 6.81%, with one, North Dakota, the country's lowest at 0.47%.

Table 1. Types, Numbers, and Percentages of Local Governments with Historic Regulation by State

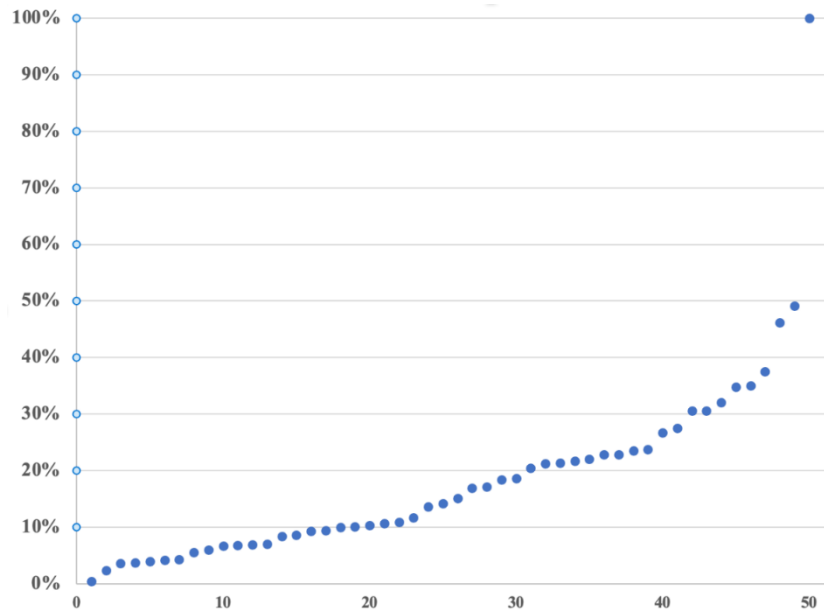
State	Types of Local Governments with Historic Regulation	Local Governments with Historic Regulation	Total # of Local Governments	% Local Governments with Historic Regulation
Alabama	Municipalities	50	461	10.85%
Alaska	Municipalities	14	149	9.40%
Arizona	Counties and Municipalities	34	106	32.08%
Arkansas	Municipalities	21	501	4.19%
California	Counties and Municipalities	148	539	27.46%
Colorado	Counties and Municipalities	125	333	37.54%
Connecticut	Municipalities	83	169	49.11%
Delaware	Counties and Municipalities	13	60	21.67%
Florida	Counties and Municipalities	146	478	30.54%
Georgia	Counties and Municipalities	157	689	22.79%
Hawaii	Counties and Municipalities	4	4	100.00%
Idaho	Counties and Municipalities	45	244	18.44%
Illinois	Counties and Municipalities	93	1,399	6.65%
Indiana	Counties and Municipalities	66	658	10.03%
Iowa	Counties and Municipalities	97	1,042	9.31%
Kansas	Counties and Municipalities	27	728	3.71%
Kentucky	Counties and Municipalities	46	535	8.60%
Louisiana	Municipalities	67	304	22.04%

Maine	Municipalities and Townships	34	488	6.97%
Maryland	Counties and Municipalities	48	180	26.67%
Massachusetts	Municipalities and Townships	123	351	35.04%
Michigan	Counties, Municipalities, and Townships	79	1,856	4.26%
Minnesota	Municipalities	59	853	6.92%
Mississippi	Counties and Municipalities	71	380	18.68%
Missouri	Counties, Municipalities, and Townships	80	1,341	5.97%
Montana	Counties and Municipalities	19	183	10.38%
Nebraska	Counties and Municipalities	15	622	2.41%
Nevada	Counties and Municipalities	8	35	22.86%
New Hampshire	Municipalities and Townships	55	234	23.50%
New Jersey	Municipalities and Townships	173	565	30.62%
New Mexico	Counties and Municipalities	14	138	10.14%
New York	Counties, Municipalities, and Townships	169	1,587	10.65%
North Carolina	Counties and Municipalities	110	652	16.87%
North Dakota	Counties, Municipalities, and Townships	8	1,718	0.47%
Ohio	Municipalities and Townships	88	2,239	3.93%
Oklahoma	Municipalities	21	590	3.56%

Oregon	Counties and Municipalities	59	276	21.38%
Pennsylvania	Municipalities and Townships	300	2,559	11.72%
Rhode Island	Municipalities and Townships	18	39	46.15%
South Carolina	Counties and Municipalities	45	316	14.24%
South Dakota	Counties and Municipalities	21	377	5.57%
Tennessee	Counties and Municipalities	66	437	15.10%
Texas	Counties and Municipalities	123	1,472	8.36%
Utah	Counties and Municipalities	97	279	34.77%
Vermont	Municipalities and Townships	38	279	13.62%
Virginia	Counties and Municipalities	66	323	20.43%
Washington	Counties and Municipalities	76	320	23.75%
West Virginia	Counties and Municipalities	61	287	21.25%
Wisconsin	Counties, Municipalities, and Townships	131	1,924	6.81%
Wyoming	Counties and Municipalities	21	122	17.21%

Table 2 depicts the rates of adoption graphically. It illustrates that while the mean (average) rate of adoption is 18.49%, the median rate of adoption (that is, the central number in the dataset) is 14.24%, which happens to be the percentage of local governments with historic regulation in South Carolina. It also shows that while seventeen states have rates of adoption of less than 10%, twenty have adoption rates higher than 20%. Hawaii, whose four local-government jurisdictions have all adopted some form of local historic regulation, appears as the outlier in Table 2, as no other state has more than half of its jurisdictions adopting local historic preservation regulations.

Table 2. Rates of Adoption Across Fifty States in Ascending Order



Given the differences among states, we wondered what factors might affect, or at least be correlated with, the numbers of localities actually adopting historic regulation. Part II addresses this inquiry.

II. VARIABLE RELATIONSHIPS WITH LOCAL HISTORIC REGULATION

As Part I reveals, the fifty states vary greatly in the extent to which local governments adopt historic preservation regulations. We cannot explain precisely why some states see more local historic regulation while others do not, as we lack sufficient longitudinal data to prove causation. Instead, we explore correlations with particular variables that accompany higher rates of local adoption in some states.

In theory, a major predictor of local adoption rates should be the content of state enabling statutes for local-government designation or regulation of historic properties. These statutes, after all, can make it either easy or difficult for local governments to exercise their authority. However, our analysis finds little relationship between state laws and local adoption rates. This finding disrupts conventional thinking that state enabling authority bears on local officials' decision-making.

Having tested a law-centric hypothesis and come up short, we then examine whether local adoption rates have any relationship to thirteen exogenous demographic, property, and political variables. Among these variables, there were nine statistically significant correlations with rates of local adoption of historic preservation regulation, the strongest being median property value. Whether median property values result from such regulation or motivate the adoption of it remains a question for future research.

We hasten to add that this study does not account for non-statutory, non-demographic factors, such as whether local adoption occurred in response to a threat to or loss of a precious or iconic resource or resources, or as a result of a concerted effort by a pivotal community figure or organization. Nor do we account for phenomena such as "copycat" adoption between geographically proximate or similarly situated communities, or the existence of a model local preservation ordinance that can be used as a template for jurisdictions. These other factors may have served as the immediate trigger for adoption, but consistent information about them would have been difficult to come by. We encourage other scholars to develop methods that could successfully evaluate these additional factors.

A. STATUTORY FRAMEWORK VARIABLES

Legal scholars often assume that the law influences human decision-making. But what if it does not? This Section considers the state frameworks that authorize local governments to designate properties as historic and regulate changes that property owners propose to their private properties. By 1971, half of the states had adopted state enabling acts providing local authority to regulate historic properties—whether in state statutes specifically covering historic districts or in state statutes on zoning offering provisions specific to zoning for historic properties.⁴⁶ By 1976, two-thirds of states had such statutes.⁴⁷ Today, all fifty states have enabling acts, imposing a variety of procedural and substantive obligations on localities whose leaders choose to exercise the authority to designate and regulate.⁴⁸

With this legal framework in mind, we hypothesized that in states where enabling laws imposed greater obligations, fewer local governments would adopt historic preservation regulation. We collected information across twenty different provisions in state enabling law—six provisions relating to the designation and fourteen relating to regulation. Of these, we identified six features of state enabling authority (three related to designation and three related to regulation) and tallied the restrictive features in each state statute. We posited that one or more of these features might impact rates of adoption. Surprisingly, our statistical analysis reveals that the content of these statutory frameworks appears to have no correlation with the percentage of local governments within a state adopting historic preservation regulation.

46. Michael F. Wiedl III, *Historic District Ordinances*, 8 CONN. L. REV. 209, 211–12 (1976).

47. *Id.*

48. Often, statutory provisions enabling designation are found in the code adjacent to provisions enabling historic preservation regulation. Sometimes, they are found in different chapters. In a few cases, historic preservation regulation is embedded within zoning enabling acts. *See also* Byrd Wood, *Local Government and Historic Preservation*, 15 F.J. 4 (2001) (providing an overview of the ways in which local preservation initiatives operate, including through zoning, comprehensive planning, housing, and transportation programs).

1. Data Gathered on Designation Enabling Authority

All fifty state legislatures authorize local governments to undertake the formal process of designating a resource as historic.⁴⁹ This designation process may result in piecemeal identification of designated sites or may result in a formal listing on a local register of historic places. For simplicity, we use the term “local register” to refer to any list of designated properties, whether the list is called the local register or not. The designation process is foundational to local historic preservation regula-

49. ALA. CODE §§ 11-68-6, 45-2-221.03, 45-42A-23.01 (2023); ALASKA STAT. § 29.55.020 (2023); ARIZ. REV. STAT. ANN. § 9-462.01(A)(10) (2023); ARK. CODE ANN. §§ 13-7-101, -104 (2023); CAL. GOV'T CODE § 25373 (West 2023); COLO. REV. STAT. §§ 24-80.1-101 to -102, -108, -108.5 (2023); CONN. GEN. STAT. § 7-147b (2023) (historic districts); CONN. GEN. STAT. § 7-147q (2023) (historic properties); DEL. CODE ANN. tit. 22, §§ 301, 302 (2023); FLA. STAT. §§ 267.011, .021, .061, .11 (2023); GA. CODE ANN. §§ 44-10-20, -22, -26 (2023); HAW. REV. STAT. § 6E-14 (2023); IDAHO CODE §§ 67-4601, -4614 to -4615 (2023); 65 ILL. COMP. STAT. 5/11-48.2-2 (2023) (municipalities); 55 ILL. COMP. STAT. 5/5-30017 (2023) (counties); IND. CODE §§ 36-7-11-1 to -18 (2023); IOWA CODE §§ 303.20, .25 (2023); KAN. CONST. art. XII, § 5 (home rule); KAN. STAT. ANN. § 75-2726 (2023); KY. REV. STAT. ANN. § 82.026 (West 2023); LA. CONST. art. VI, § 17; LA. STAT. ANN. §§ 25:731, :733 (2023); ME. STAT. tit. 30-A, § 5730 (2023); ME. STAT. tit. 30-A, § 3001 (2023) (home rule authority); MD. CODE ANN., LAND USE §§ 8-101, -205, -304 (West 2023); MD. CODE ANN., FIN. INST. §§ 13-1109 to -1110 (West 2023) (special legislation for “heritage areas”); MASS. GEN. LAWS ch. 40C, §§ 1–17 (2023); MICH. COMP. LAWS §§ 399.201 to .201a, .203 (2023); MINN. STAT. §§ 138.71 to .75, 471.193 (2022); MISS. CODE ANN. § 39-13-11 (2023); MO. CONST. art. III, § 48; MO. REV. STAT. §§ 89.010 to .040 (2023); MONT. CODE ANN. §§ 90-1-160 to -164, -167 to -169 (2021); NEB. REV. STAT. §§ 14-2001 to -2004, 19-901 (2023); NEV. REV. STAT. § 384.005 (2021); N.H. REV. STAT. ANN. § 673:1 (2023); N.J. STAT. ANN. §§ 40:55D-107 to -111 (West 2023); N.M. STAT. ANN. §§ 3-22-1 to -1.1, -4, -6 (2023); N.Y. GEN. MUN. LAW § 96-a (McKinney 2023); N.C. GEN. STAT. §§ 160D-942, -944 to -945 (2023); N.D. CENT. CODE §§ 40-05-01(75), 55-10-01 to -12 (2023); OHIO REV. CODE ANN. § 713.02 (West 2023); OKLA. STAT. tit. 19, §§ 866.1 to .35 (2022) (general zoning authority); OKLA. STAT. tit. 53, § 353 (2022); OR. REV. STAT. § 227.215 (2021); OR. ADMIN. R. 660-023-0200 (2022); 37 PA. CONS. STAT. §§ 501–512 (2022); 45 R.I. GEN. LAWS §§ 45-24.1-1 to -23 (2023); S.C. CODE ANN. §§ 6-29-310 to -380 (2023); S.D. CODIFIED LAWS §§ 1-19B-11, -20, -22 (2023); TENN. CODE ANN. § 13-7-404 (2023); TEX. GOV'T CODE ANN. § 442.001 (West 2023); TEX. LOC. GOV'T CODE ANN. § 211.0165 (West 2023); UTAH CODE ANN. § 10-9a-527 (LexisNexis 2023); VT. STAT. ANN. tit. 24, §§ 4433, 4464 (2023); VA. CODE ANN. § 15.2-2306 (2023); WASH. REV. CODE §§ 35.63.080, .110 (2023); W. VA. CODE § 8-26A-6 (2020); WIS. STAT. §§ 44.30 to .31, 44.44, 59.69(4)(L) (2023); WYO. STAT. ANN. §§ 34-1-301 to -304 (2023).

tion because regulation will, at a minimum, govern locally designated historic resources.⁵⁰ State law can dictate both the substantive criteria and the process for local designations. We posited that three provisions of designation enabling statutes may correlate with the rates of local historic preservation regulation adoption: whether the statute lists criteria for local designation (a factor we call Designation 1); whether it requires a vote or consent of owners of property proposed for a historic designation (Designation 2); and whether it requires that a state body opine on a local designation (Designation 3).

Most state statutes list substantive criteria for local designation (Designation 1). Often, these criteria allow for designation if the local government determines that the site has significance, architectural merit, archaeological merit, and/or material integrity. Pennsylvania, for example, enables designation of sites with “historic, architectural or archaeological significance,”⁵¹ while Wisconsin lists its criteria for designation as “significant in the history, prehistory, architecture, archaeology or culture of this state, its rural and urban communities or the nation.”⁵² In total, thirty-seven states statutes enumerate specific designation criteria. We consider the imposition of criteria to be restrictive because local governments have greater difficulty designating historic properties to satisfy the requirements. If no criteria for local designation are listed in the state statute, the designation is considered permissive.

Some state statutes require a vote or the express consent of a property owner prior to historic designation (Designation 2). Owners may object to a proposed designation of their property for a variety of reasons, including a reluctance to restrict their ability to change their property; a reluctance to be subjected to the decisions of a local historic commission; and a fear of property value increases that could lead to higher property taxes or even displacement. Recognizing the possibility of objection, ten

50. Note that some states allow local governments to regulate historic resources on the National Register of Historic Places or the state equivalent.

51. 37 PA. CONS. STAT. § 503 (2022).

52. WIS. STAT. § 44.31(3) (2023).

state statutes require property owners to vote or expressly consent to designation.⁵³ These requirements are restrictive because local governments have an additional procedural hurdle to surmount before they can designate properties as historic.

About half of the states require a state body to weigh in on a proposed local designation before it can be finalized (Designation 3). This extra step may add time and uncertainty to a designation process, although in some cases the reviews may have a positive effect in terms of local stakeholder education. Because local governments will likely have greater difficulty finalizing a historic designation if the state also must approve, the existence of this step is considered restrictive. In total, twenty-four state statutes require a state entity to also approve a local designation, including state historical commissions,⁵⁴ state departments of cultural or community affairs,⁵⁵ or state historical societies or commissions.⁵⁶

2. Data Gathered on Regulation Enabling Authority

All fifty state legislatures authorize local governments to regulate proposed changes to properties listed on local registers of historic places.⁵⁷ Some legislatures expand this authority to

53. Note, however, that in thirteen other states, property owners may have the opportunity to provide written comments, testify at a public hearing, or otherwise participate in a pending designation process.

54. ALA. CODE § 11-68-6 (2023) (Alabama Historical Commission); ALASKA STAT. § 29.55.020 (2023) (Alaska Historical Commission in the Department of Natural Resources).

55. GA. CODE ANN. § 44-10-26 (2023) (Georgia Department of Community Affairs); IOWA CODE § 303.20(4) (2023) (Iowa Department of Cultural Affairs); W. VA. CODE § 8-26A-6 (2020) (West Virginia Department of Culture and History).

56. KAN. STAT. ANN. § 75-2726(d) (2023) (Kansas State Historical Society); ME. STAT. tit. 30-A, § 5730 (2023) (Maine Historic Preservation Commission); MONT. CODE ANN. § 90-1-164(2) (2023) (Montana Historical Society & Montana Arts Counsel); N.D. CENT. CODE § 55-10-02 (2023) (North Dakota State Historical Society & State Historical Board); WIS. STAT. § 44.44(1) (2023) (Wisconsin State Historical Society).

57. ALA. CODE § 11-68-9 (2023); ALASKA STAT. § 29.55.010 (2023); ARIZ. REV. STAT. ANN. § 9-462.01(A)(10) (2023); ARK. CODE ANN. §§ 13-7-101, -108 (2023); CAL. GOV'T CODE § 25373 (West 2023); COLO. REV. STAT. §§ 24-80.1-101 to -105, -107, -109 (2023); CONN. GEN. STAT. § 47-18a (2023) (National Register); CONN. GEN. STAT. §§ 7-147d to -147g, -147j (2023) (districts); CONN. GEN. STAT. §§ 7-147s to -147v, -147y (2023) (properties); DEL. CODE ANN. tit. 22, §§ 301, 302 (2023); FLA. STAT. §§ 267.011, .061, .0612, .062, .0625, .11, .115, .16 (2020); GA.

include properties listed on the National Register of Historic Places or equivalent state registers. The enabling acts also usually allow local governments to regulate proposed demolition, and sometimes allow localities to require affirmative maintenance or a waiting period before a demolition. (Part III outlines how local governments exercise these various authorities.) We posited that three provisions of regulation enabling statutes may correlate with the rates of local historic preservation regulation adoption: whether the state statute expressly authorizes regulation of properties on the National Register of Historic Places (Regulation 1), whether it authorizes regulation of properties on the applicable state register (Regulation 2), and whether it lists criteria for local regulation (Regulation 3).

CODE ANN. §§ 44-10-20, -27 to -29 (2023); HAW. REV. STAT. § 6E-15 (2023); IDAHO CODE §§ 67-4601, -4608, -4611, -4616 (2023); 65 ILL. COMP. STAT. 5/11-48.2-2 (2023) (municipalities); 55 ILL. COMP. STAT. 5/5-30011, -30018 (2023) (counties); IND. CODE §§ 36-7-11-1 to -18 (2023); IOWA CODE §§ 303.27, .28, .30 (2023); KAN. CONST. art. XII, § 5 (home rule); KAN. STAT. ANN. §§ 75-2724, -2725 (2023); KY. REV. STAT. ANN. § 82.026 (West 2023); LA. CONST. art. VI, § 17; LA. STAT. ANN. §§ 25:731, :737–:739, :901 (2023); ME. STAT. tit. 30-A, § 5730 (2023); ME. STAT. tit. 30-A, § 3001 (2023) (home rule authority); MD. CODE ANN., LAND USE §§ 8-101 to -105, -302 to -303 (West 2023); MD. CODE ANN., FIN. INST. § 13-1109 (West 2023) (special legislation for “heritage areas”); MASS. GEN. LAWS ch. 40C, §§ 1, 6–8 (2023); MASS. GEN. LAWS ch. 9, § 26D (2021); MICH. COMP. LAWS §§ 399.154, .201, .205 (2023); MINN. STAT. §§ 138.71 to .75, 471.193 (2022); MISS. CODE ANN. §§ 39-13-3, -13, -15 (2023); MO. CONST. art. III, § 48; MO. REV. STAT. §§ 89.010–.040 (2023); MONT. CODE ANN. §§ 90-1-160 to -164, -167 to -169 (2021); NEB. REV. STAT. §§ 14-2001 to -2004, 19-901 (2023); NEV. REV. STAT. § 384.005 (2021); N.H. REV. STAT. ANN. § 673:1 (2023); N.J. STAT. ANN. §§ 40:55D-107, -111 (West 2023); N.M. STAT. ANN. §§ 3-22-1 to -1.1, -3 to -4, -6 (2023); N.Y. GEN. MUN. LAW § 96-a (McKinney 2023); N.C. GEN. STAT. §§ 160D-947 to -950 (2023); N.D. CENT. CODE §§ 40-05-01(75), 55-10-01, 55-10-07 to 55-10-08, 55-10-11 (2023); OHIO REV. CODE ANN. § 713.02 (West 2023); OKLA. STAT. tit. 19, §§ 866.1–.35 (2022) (general zoning authority); OKLA. STAT. tit. 53, § 353 (2022); OR. REV. STAT. § 227.215 (2023); OR. ADMIN. R. 660-023-0200 (2023); 37 PA. CONS. STAT. §§ 501, 507, 510 (2023); 45 R.I. GEN. LAWS §§ 45-24.1-1 to -1.1, -4, -7 (2023); S.C. CODE ANN. §§ 6-29-310 to -380 (2023); S.D. CODIFIED LAWS §§ 1-19A-13.2, 1-19B-20, 1-19B-27, 1-19B-31, 1-19B-42 to 1-19B-44 (2023); TENN. CODE ANN. §§ 13-7-404, -407 to -408, 7-51-1201, 7-51-1203 (2023); TEX. GOV'T CODE ANN. §§ 442.001, .0085 (West 2023); UTAH CODE ANN. § 10-9a-527 (LexisNexis 2023); VT. STAT. ANN. tit. 24, §§ 4433, 4464 (2023); VA. CODE ANN. § 15.2-2306 (2023); WASH. REV. CODE §§ 35.63.080, .110 (2023); W. VA. CODE §§ 8-26A-4 to -5, -7 (2021); WIS. STAT. §§ 44.30, .40, .42, 59.69(4)(L) (2023); WYO. STAT. ANN. §§ 34-1-301 to -304 (2023).

State statutes explicitly authorize the types of properties that local governments may regulate. All state statutes allow localities to regulate changes to properties listed on local registers of historic places. These statutes align local regulatory authority with local designation authority, which seems logical from a political economy perspective. Nevertheless, this statutory framework may be burdensome on local governments, insofar as the state requires threshold criteria to be met, or specific processes to be followed, before a resource may be placed on a local register. Some local officials may wish to reduce these bureaucratic burdens and regulate properties listed on the National Register of Historic Places or the applicable state equivalents in addition to, or in lieu of, properties that have undergone the local designation process. Applications to list properties on these registers undergo evaluations by federal or state authorities, usually with little to no local-government involvement. Giving localities the authority to regulate these places can theoretically incentivize local governments to adopt regulations.

Only some state statutes provide explicit authority for local governments to regulate properties on the National Register of Historic Places (Regulation 1) or the state register equivalent (Regulation 2). We consider the existence of these provisions to be permissive, in that they may encourage local officials to enact regulations because they reduce their bureaucratic burden of identifying and designating properties. Eighteen states expressly grant the power to regulate National Register properties to local governments, while eight states grant the power to regulate properties on the state register.⁵⁸

Some state statutes list substantive criteria for local regulation (Regulation 3). Examples of such criteria might include requirements that the local government make certain findings, or that a certificate of appropriateness may be issued only if the proposal is “in harmony with the general purpose and intent” of the statute in preserving the historic character of a district.⁵⁹ If these criteria exist, the statute is considered restrictive because

58. As described in Part II.A.3, it may be possible for local governments to regulate National Register or state register properties pursuant to their police powers and home rule authority.

59. See, e.g., GA. CODE ANN. § 44-10-28(h) (2023); NEV. REV. STAT. § 384.150(3) (2021); W. VA. CODE § 8-26A-7(8) (2021).

local governments have greater difficulty regulating historic districts if requirements are enumerated in state statutes. Nineteen state statutes explicitly list criteria for regulating historic properties.

3. Analysis

The data collected clarified that each state's statutes treat local governments differently. For the three designation and three regulation provisions described above, we classified each state statute as either restrictive or permissive using a binary variable. States classified as permissive were assigned 0, and states classified as restrictive were assigned 1. We then found the average percentage of adoption of historic regulation among states classified as restrictive and permissive.

Then we proceeded to test our hypothesis that states with restrictive designation and regulation statutes would have lower percentages of adoption of historic districts. For this analysis, we deployed a Welch's *t*-test to determine whether the average rate of adoption differed significantly between states with restrictive and permissive regulatory processes. As evidenced in Table 3, none of the tests yielded statistically significant results (*p*-value of less than 0.05). In other words, the restrictiveness of the state regulatory process does not correspond with a significant difference in the average percentage of adoption of historic regulation.

Table 3. Average Percentage of Adoption of Historic Regulation for Restrictive and Permissive State Regulatory Processes⁶⁰

Designation or Regulation Enabling Authority	Average Percentage of Adoption of Historic Regulation for States with Restrictive Regulatory Process (Std. Dev.)	Average Percentage of Adoption of Historic Regulation for States with Permissive Regulatory Process (Std. Dev.)	<i>p</i> -value ⁶¹	Appendix I Graph
Designation 1 [Restrictive (N=37); Permissive (N= 13)]	0.164 (0.118)	0.244 (0.254)	0.291	A
Designation 2 [Restrictive (N=10); Permissive (N=40)]	0.219 (0.144)	0.176 (0.170)	0.436	B
Designation 3 [Restrictive (N=24); Permissive (N=26)]	0.149 (0.119)	0.218 (0.194)	0.132	C
Regulation 1 [Restrictive (N=32); Permissive (N=18)]	0.211 (0.189)	0.139 (0.097)	0.081	D
Regulation 2 [Restrictive (N=41); Permissive (N=9)]	0.198 (0.169)	0.127 (0.138)	0.201	E
Regulation 3 [Restrictive (N=19); Permissive (N=31)]	0.208 (0.132)	0.171 (0.183)	0.402	F

60. All calculations were completed using R statistical software.

61. *P*-value is taken from a Welch two sample *t*-test between the means of the restrictive states and the permissive states. A Welch's *t*-test enables comparison of the means of two datasets with unequal variances to determine if the means are significantly different. Statistically significant *p*-values that are less than 0.05 would have been denoted in bold, but there are none.

Furthermore, for each of the six enabling authorities, we found the point-biserial correlation between the percentage of adoption of historic regulation and the restrictiveness of the state regulatory process. As evidenced in Table 4, none of these correlations were statistically significant. Surprisingly, this indicates that there is little to no relationship between the restrictiveness of a state's designation and regulation processes and the percentage of adoption of historic districts.

We continued by finding the overall restrictiveness of each state's enabling authority. The number of restrictive enabling authorities were added for each state to establish a 1 to 6 scale representing the total number of restrictive measures in the state. As shown in Graph G in Appendix I, three states received a 1 (least restrictive) and three states received a 6 (most restrictive), four states received a 5, and the remaining forty states merited a rating between 2 and 4. The last row of Table 4 reports no statistically significant correlation between the overall restrictiveness of a state's regulatory process and the rate of adoption of historic regulation. In other words, as state regulatory processes are more restrictive, there is no associated decrease (or increase) in the rate of adoption of historic regulation. This further indicates a lack of relationship between the restrictiveness of enabling authority and rate of adoption.

Table 4. Correlation Between Restrictive or Permissive Regulatory Process and the Percentage of Adoption of Historic Districts

Designation or Regulation Enabling Authority	Correlation (r) ⁶²	p -value	Appendix I Graph
Designation 1 [Restrictive (N=37); Permissive (N=13)]	-0.215	0.133	A
Designation 2 [Restrictive (N=10); Permissive (N=40)]	0.104	0.473	B
Designation 3 [Restrictive (N=24); Permissive (N=26)]	-0.213	0.138	C
Regulation 1 [Restrictive (N=32); Permissive (N=18)]	0.212	0.139	D
Regulation 2 [Restrictive (N=41); Permissive (N=9)]	0.167	0.245	E
Regulation 3 [Restrictive (N=19); Permissive (N=31)]	0.112	0.438	F
Overall Restrictiveness of State Regulatory Process (scale of 1–6)	0.051	0.723	G

This finding calls into question the importance of subject-matter-specific state enabling authority in shaping local-government decisions. Administrative law scholars tend to view state enabling authority as a driver of local regulatory adoption. Enabling statutes may still play an important role in signaling the legality of local action in particular regulatory spheres. However, overstating the influence of enabling authorities ignores that lo-

62. Point-biserial correlation and p -value are used to test correlation between a continuous variable (percentage of adoption of historic regulation) and a binary variable (permissive or restrictive state regulatory process).

cal governments in most states can shape their laws in the absence of state statutory authority, through “home rule” authority that empowers them to adopt a wide range of ordinances to advance public health, safety, and welfare goals.⁶³

This home rule authority may enable local governments to adopt historic preservation regulations even in states we measured to be restrictive. Some local governments draw from their home rule authority to go further in local ordinances than state law expressly allows. For example, the towns of Hartford and New Britain both regulated properties on the National Register of Historic Places in the absence of express authority from the Connecticut General Assembly power.⁶⁴ Both towns justified these provisions based on their home rule authority.⁶⁵ The popularity of these local ordinances led state legislators to amend the state enabling act to expressly allow towns to regulate properties on the National Register of Historic Places.⁶⁶ New research should mine the interplay between enabling statutes and home rule authority in the context of local historic preservation regulations.

63. A survey of local historic preservation regulation in Kentucky highlights the importance of home rule authority alongside state enabling authority. Kristan E. Curry, *Historic Districts: A Look at the Mechanics in Kentucky and a Comparative Study of State Enabling Legislation*, 11 J. NAT. RES. & ENV'T L. 229, 239–47 (1996) (including enabling authority specific to preservation ordinances and enabling authority allowing preservation considerations to be incorporated into zoning decisions).

64. See, e.g., HARTFORD, CONN., MUN. CODE § 28-218(f) (2023) (defining “protected property” to include National Register and state register properties); HARTFORD, CONN., MUN. CODE § 28-219(a) (2023) (prohibiting demolition, alteration, or new construction within National Register and state register districts and demolition or alteration of National Register and state register properties) (adopted in 2005). NEW BRITAIN, CONN., CODE OF ORDINANCES § 19-143 (2023) (defining “protected property” to include properties listed on the National, State, or local registers of historic places); NEW BRITAIN, CONN., CODE OF ORDINANCES § 19-144 (2023) (outlining review processes for activities affecting such properties) (adopted in 2011).

65. HARTFORD, CONN., MUN. CODE § 28-210 (2023) (including in the introductory findings the power of the city to adopt the preservation ordinance pursuant to statutory home rule authority); NEW BRITAIN, CONN., CODE OF ORDINANCES § 19-140 (2023) (discussing the power of the city to adopt the preservation ordinance pursuant to the “Home Rule Act, section 7-147 of the General Statutes”).

66. CONN. GEN. STAT. § 47-18a (2023).

B. DEMOGRAPHIC, PROPERTY, AND POLITICAL VARIABLES

Given the perhaps surprising finding that state statutory frameworks have little correlation with rates of local historic preservation regulation adoption, this Section turns to potential correlations with thirteen exogenous demographic, property, and political variables. Of nine statistically significant variables, six demonstrated moderately strong to very strong relationships with the percentage of local governments adopting historic preservation regulation. Subsequent analysis revealed that eight of the variables were statistically significantly correlated with the strongest-correlated variable, median property value, prompting more focused analysis of this single factor.

1. Hypotheses and Data Gathered

After reviewing the findings in Part I.C, we developed several hypotheses about the kinds of places most likely to have low or high percentages of local governments adopting historic preservation regulations.

First, we viewed the actual rates of adoption, to discern any noticeable trends. Table 1 shows that North Dakota (0.5%), Nebraska (2.4%), Oklahoma (3.6%), and Kansas (3.7%) have the lowest rates of adoption. All have relatively small statewide populations, have few cities, and tend to vote for Republican politicians. The authors hypothesized that states with small overall populations, small urban populations, and majority-Republican voters may have lower adoption rates. States with small populations or small urban populations may have fewer towns with the population or resources needed to draft, publicize, and implement historic preservation regulations. The political-leaning hypothesis seemed particularly plausible given the deregulatory or anti-regulatory nature of the national Republican party platform.

Turning to the highest rates of adoption, Table 1 shows that after Hawaii (100%), Connecticut (49.1%) and Rhode Island (46.2%) have the highest adoption rates. Colorado (37.5%), Massachusetts (35.0%), Utah (34.8%), Arizona (32.1%), and New Jersey (30.6%) follow. Four of these states (Connecticut, Rhode Island, Massachusetts, and New Jersey) were settled early by non-Indigenous people and obtained statehood early; these states may theoretically have greater number of historic properties eligible for designation and protection. The more historic nature of

these communities might, in turn, lead to more interest in protecting historic places—and thus more regulation. Accordingly, we developed the hypothesis that states with an earlier year of statehood have higher rates of adoption. Except for Utah, these states all have populations that tend to vote for Democratic politicians, a fact that reinforced the political-leaning hypothesis developed when we characterized states with the lowest rates of adoption.

The rate-of-adoption data in Table 1 also reveals that the ten states with over one thousand local governments have rates of adoption of less than 12%. A high number of local governments within a state might be considered a proxy for the complexity of a state's political economy. A state with a high number of local governments might see fragmentation that hinders regulatory activity or dilutes instances of information-sharing. We hypothesized, therefore, that states with a large number of local governments were also likely to have low rates of adoption of historic preservation regulation.

Finally, we added variables covering additional demographic and property-related information. In perusing the characteristics collected by the 2010 U.S. Census, the percentage of White population and the percentage of English-speaking population seemed relevant, given the literature associating historic preservation with White and English-speaking history, culture, and values.⁶⁷ Poverty rates, household income levels, and education levels (i.e., obtaining associate's or bachelor's degrees) also

67. See, e.g., Erica Avrami et al., *Confronting Exclusion: Redefining the Intended Outcomes of Historic Preservation*, 8 CHANGE OVER TIME 102 (2018) (exploring historic preservation's relationship to gentrification); Raymond W. Rast, *A Matter of Alignment: Methods to Match the Goals of the Preservation Movement*, 28 F.J. 13 (2014) (asserting preservation methods are not in line with the goal of diversification in historic preservation); Vince Michael, *Diversity in Preservation: Rethinking Standards and Practices*, 28 F.J. 5 (2014) (contending white preservationists need to integrate efforts with diverse preservationists); Antoinette J. Lee, *From Historic Architecture to Cultural Heritage: A Journey Through Diversity, Identity, and Community*, 1 FUTURE ANTERIOR: J. HISTORIC PRES., HIST., THEORY & CRITICISM 15 (2004) (exploring diversity as a topic within historic preservation).

seemed relevant.⁶⁸ Based in part on prior research that identified several such correlations,⁶⁹ we hypothesized that states with high percentages of White populations, high percentages of English speakers, low poverty rates, wealthier households, and higher education levels also have higher rates of adoption of local preservation regulation. We also noted the extensive literature associating historic preservation with high-property-value areas.⁷⁰ We collected median property values on a statewide basis, hypothesizing that states with high average property values see more local preservation regulation.⁷¹

68. The notion that education levels might matter in assessing the characteristics of places with more historic preservation regulation emerged from a study analyzing the demographic characteristics of places formally designated historic and finding that education was more important in influencing the likelihood of designation than strictly income. Douglas S. Noonan & Douglas J. Krupka, *Determinants of Historic and Cultural Landmark Designation: Why We Preserve What We Preserve*, 34 J. CULTURAL ECON. 1, 16–17 (2010).

69. A Pennsylvania study collected information across a variety of demographic factors and found that communities with historic preservation provisions embedded in zoning also had higher incomes, lower vacancy rates, and higher education levels beyond one year of college. Steven Burg et al., *Inventory and Analysis of Historic Preservation Ordinances in Pennsylvania Municipalities*, THE CTR. FOR RURAL PA. 86 (Nov. 2018), <https://rural.pa.gov/download.cfm?file=Resources/reports/assets/36/Historic-Preservation-Ordinances-2018.pdf> [<https://perma.cc/QB4U-RUVD>]. These communities also had higher rents and higher median housing values. *Id.*

70. See *infra* Part II.B.4.

71. Other potentially relevant factors—including a community desire to improve prestige or reputation through preservation regulation, volume of heritage tourism, or the availability of tax credits and subsidies—lacked sufficient national data to include in the analysis. One interesting resource on defensive designation (i.e., designation in response to a threat or perceived threat) is the story of a North Carolina man pursuing local historic district designation to save his neighborhood from a proposed highway. WILLIAM E. SCHMICKLE, *THE POLITICS OF HISTORIC DISTRICTS: A PRIMER FOR GRASSROOTS PRESERVATION* (2007); see also Carol M. Rose, *Preservation and Community: New Directions in the Law of Historic Preservation*, 33 STAN. L. REV. 473 (1981) (offering a “community-building” rationale for historic preservation, encompassing inspiration, the elevation of aestheticism and architectural merit, and the use of preservation in community development); Robert E. Stipe, *Why Preserve Historic Resources?*, in LEGAL TECHNIQUES IN HISTORIC PRESERVATION 1, 2 (1972) (noting the “important human and social purpose” that preservation serves).

In sum, thirteen variables were tested for each state: year of statehood,⁷² number of local governments in the state,⁷³ total population,⁷⁴ percentage of urban population,⁷⁵ median household income,⁷⁶ median property value,⁷⁷ non-Hispanic White percentage of the population,⁷⁸ non-English speaking percentage of

72. *Order of States' Admission*, ARK. SEC'Y OF STATE, <https://www.sos.arkansas.gov/education/arkansas-history/history-of-the-flag/order-of-states-admission> [<https://perma.cc/TZ2S-AVMC>].

73. *2017 Census of Governments*, *supra* note 33.

74. *Annual Estimates of the Resident Population for the United States, Regions, States, and Puerto Rico: April 1, 2010 to July 1, 2019 (NST-EST2019-01)*, U.S. CENSUS BUREAU (2019), <https://www2.census.gov/programs-surveys/popest/tables/2010-2019/state/totals/nst-est2019-01.xlsx> [<https://perma.cc/2MPN-YE4A>] (representing 2010 data figures).

75. This variable is defined as the percentage of the population living in an incorporated place with a population of 50,000 or more. *Annual Estimates of the Resident Population for Incorporated Places of 50,000 or More, Ranked by July 1, 2019 Population: April 1, 2010 to July 1, 2019 (SUB-IP-EST2019-ANNRNK)*, U.S. CENSUS BUREAU (2019) [hereinafter *Annual Estimates of the Resident Population*], <https://www2.census.gov/programs-surveys/popest/tables/2010-2019/cities/totals/SUB-IP-EST2019-ANNRNK.xlsx> [<https://perma.cc/Z8NU-2CAZ>] (representing 2010 data figures).

76. *American Community Survey Data*, U.S. CENSUS BUREAU [hereinafter *ACS Data*], <https://www.census.gov/programs-surveys/acs/data.html> (click on "Selected Economic Characteristics," then filter by year ("2019")) (output archived at <https://perma.cc/H9F7-2MCL>) (showing data for median household income (dollars) under "INCOME AND BENEFITS (IN 2019 INFLATION ADJUSTED DOLLARS)").

77. *ACS Data*, *supra* note 76 (click on "Selected Housing Characteristics," then filter by year ("2019")) (output archived at <https://perma.cc/R4PY-X9QW>) (showing data for median (dollars) under "VALUE").

78. *ACS Data*, *supra* note 76 (click on "Demographic and Housing Estimates," then filter by year ("2019")) (output archived at <https://perma.cc/MNF5-X28G>) (showing data under "HISPANIC OR LATINO AND RACE—Not Hispanic or Latino, White alone").

the population,⁷⁹ poverty rate,⁸⁰ percentage of the voting population that voted for Donald Trump in the 2020 election,⁸¹ percentage of the voting population that voted for Joe Biden in the 2020 election,⁸² percentage of population with a bachelor's degree or higher,⁸³ and percentage of population with an associate's degree.⁸⁴ Table 5 reports summary statistics for these thirteen variables.

79. *ACS Data*, *supra* note 76 (click on “Selected Social Characteristics,” then filter by year (“2019”)) (output archived at <https://perma.cc/VWK7-93GP>) (showing data under “LANGUAGE SPOKEN AT HOME—Language other than English”).

80. *ACS Data*, *supra* note 76 (click on “Selected Economic Characteristics,” then filter by year (“2019”)) (output archived at <https://perma.cc/H9F7-2MCL>) (showing data under “PERCENTAGE OF FAMILIES AND PEOPLE WHOSE INCOME IN THE PAST 12 MONTHS IS BELOW THE POVERTY LEVEL—All people”).

81. *Official 2020 Presidential General Election Results*, FED. ELECTION COMM’N (2021), <https://www.fec.gov/resources/cms-content/documents/2020presgeresults.pdf> [<https://perma.cc/P2PZ-AR8J>].

82. *Id.*

83. *ACS Data*, *supra* note 76 (click on “Selected Social Characteristics,” then filter by year (“2019”)) (output archived at <https://perma.cc/VWK7-93GP>) (showing data under “EDUCATIONAL ATTAINMENT—Bachelor’s degree or higher”).

84. *ACS Data*, *supra* note 76 (click on “Selected Social Characteristics,” then filter by year (“2019”)) (output archived at <https://perma.cc/VWK7-93GP>) (showing data under “EDUCATIONAL ATTAINMENT—Associate’s degree”).

Table 5. Summary Statistics for Selected Variables

Variable	Mean (Std. Dev.)	Min.	Max.
Percentage of Adoption of Historic Preservation Regulation	18.5% (16.5%)	0.5%	100%
Year of Statehood	1838 (49)	1776	1959
Number of Local Governments in the State	628 (611)	4	2,559
Total Population	6,162,876 (6,848,235)	563,626	37,253,956
Percentage of Urban Population	28% (13%)	0%	64%
Median Household Income	\$64,976 (\$10,604)	\$45,792	\$86,738
Median Property Value	\$247,216 (\$107,539)	\$124,600	\$669,200
Non-Hispanic White Percentage of Population	68% (16%)	22%	93%
Percentage of Non-English-Speaking Population	15% (10%)	3%	45%
Poverty Rate	12% (3%)	7%	20%
Percentage of Votes for Trump in 2020 Election	50% (10%)	31%	70%
Percentage of Votes for Biden in 2020 Election	48% (10%)	27%	66%
Percentage of Population with a Bachelor's Degree or Higher	32% (5%)	21%	45%
Percentage of Population with an Associate's Degree	9.1% (1.5%)	6.4%	14%

2. Correlations and Statistical Significance

Of the thirteen hypotheses about demographic, property, and political variables and their correlations with rates of adoption, additional statistical analysis yields key validations. This Subsection explains the methodology chosen and the outcomes of this analysis.

The choice of statistical analysis depends on the nature of the data. Here, all fourteen variables (thirteen independent variables and the dependent rate-of-adoption variable) are continuous, quantitative variables. Accordingly, a Pearson correlation can most appropriately measure the strength and significance of their association. A few words about how to interpret results of a Pearson correlation analysis should suffice to orient a reader. A Pearson correlation coefficient r varies from +1 to -1, with 0 meaning no association between the two tested variables. An r value closer to +1 means a high positive association in that as one variable increases, the other also increases. Conversely, an r value closer to -1 means a high negative association in that as one variable increases, the other decreases. Positive or negative r values ranging between 0.5 and 1 (in absolute terms) are considered moderate to very strong. In addition to calculating the r values, calculating the p -value of these correlations is important to understand whether the r values are statistically significant. A p -value is defined as the probability of the current correlation result if the correlation coefficient were 0 (i.e., no association). A p -value less than 0.05 is considered to be statistically significant, in that it shows a less-than-5% probability of the current result if the correlation coefficient were 0. The r values and p -values must be interpreted together to understand the strength and significance of any correlation.

Table 6 reports the Pearson correlation and p -value, rounded to the third decimal place, between each of the thirteen independent variables and the percentage of local governments with historic preservation regulations. Appendix II contains the corresponding scatterplots of each two-variable correlation.

Table 6. Correlations Between Selected Variables and the Percentage of Local Governments with Historic Preservation Regulation

Variable	Correlation (<i>r</i>)	<i>p</i> -value ⁸⁵	Appendix II Graph
Year of Statehood	0.115	0.425	A
Number of Local Governments in the State	-0.462	0.001	B
Total Population	-0.031	0.830	C
Percentage of Urban Population	0.058	0.687	D
Median Household Income	0.527	< 0.001	E
Median Property Value	0.753	< 0.001	F
Non-Hispanic White Percentage of Population	-0.487	< 0.001	G
Percentage of Non-English-Speaking Population	0.433	0.002	H
Poverty Rate	-0.288	0.043	I
Percentage of Votes for Trump in 2020 Election	-0.463	0.001	J
Percentage of Votes for Biden in 2020 Election	0.463	0.001	K
Percentage of Population with a Bachelor's Degree or Higher	0.337	0.017	L
Percentage of Population with an Associate's Degree	-0.150	0.300	M

85. Statistically significant *p*-values that are less than 0.05 are denoted in bold.

Nine of the independent variables yield a p -value less than 0.05. Of those nine statistically significant correlations, two r values are greater than 0.50: median property value (0.753) and median household income (0.527).⁸⁶ Four r values are slightly less than 0.50, but hover close enough to it that they are worth discussing briefly further: non-Hispanic White percentage of the population (-0.487), Trump and Biden in the 2020 election (negative and positive (respectively) correlations of 0.463),⁸⁷ and the number of local governments (-0.462). The remaining three independent variables with statistically significant correlations—the percentage of non-English speaking population (0.433), the percentage of the population with a bachelor's degree or higher (0.337), and the poverty rate (-0.288)—are insufficiently strong to pursue further. A brief summary of each of the six correlations with possible importance to our discussion follows.

The strongest correlation is between median property value and the percentage of adoption of historic preservation regulations, confirming our hypothesis about the links between these two variables. As the percentage of historic preservation regulations increases among states, so do median property values. While no empirical studies link local *regulation* to property values, many studies link historic *designation* to property values.⁸⁸ As will be discussed below,⁸⁹ local historic regulations apply almost exclusively to properties formally designated historic by a public body. Thus, scholars' findings that historic designation is associated with greater property values than properties that are not designated can help to explain why local regulation of historic places might also correlate with higher median property values. However, if these scholars' work holds true, an endogeneity problem persists, in that that this particular variable (the mean property value) is correlated with designation. Thus, these

86. Note that these correlations are weaker when the outlier state, Hawaii, with the greatest percentage of adoption of historic preservation regulations (100%) is omitted from the dataset. When Hawaii is omitted, the correlation with median property value drops from 0.753 to 0.605. Similarly, the correlation with median household income drops from 0.527 to 0.517. A full table containing the correlation and p -value with Hawaii excluded from the state dataset is available in Appendix II, Table 1.

87. In a country with largely binary electoral politics, you would expect for these two numbers to be, as they appear here, identical in absolute terms and opposite in sign.

88. See *infra* Part II.B.4.

89. See *infra* Part III.A.

correlations do not reveal whether greater percentages of historic preservation regulations cause property values to increase, or whether properties of greater value are more likely to be historically designated.

The second-strongest correlation is between median household income and the percentage of adoption of historic preservation regulations, again confirming our hypothesis about this relationship. As is the case with median property values, this correlation is positive, meaning that as a state's rate of local adoption of historic preservation regulations increases, so do household incomes. Because we do not study causation, it is difficult to say whether wealthy people more often subject themselves to local historic district regulations than lower-income people. Nor can we determine whether such regulation positively contributes to household wealth by maintaining or increasing property values. We do note that it seems likely that places with high median household income also have high median property values, and that the relationship between these two variables may require further analysis, further explored in Part II.B.3 next.

The third-strongest significant correlation, with the non-Hispanic White percentage of the population of the state, is negative. This means that as the non-Hispanic White percentage of the population increases, the percentage of adoption of historic preservation regulations tends to decrease. This finding means our hypothesis about this relationship, which we predicted precisely opposite, was incorrect. We realized that this result may be explained (or skewed) by states like Hawaii, Nevada, and California, with relatively low percentages of non-Hispanic White populations (less than 50% of the population is non-Hispanic White⁹⁰) and relatively high percentages of adoption of historic

90. ACS Data, *supra* note 76 (click on "Demographic and Housing Estimates," then filter by year ("2019") and geography ("California")) (output archived at <https://perma.cc/4QLJ-4FNT>) (showing percentage under "HISPANIC OR LATINO AND RACE—Not Hispanic or Latino, White alone" as 36.3%); ACS Data, *supra* note 76 (click on "Demographic and Housing Estimates," then filter by year ("2019") and geography ("Hawaii")) (output archived at <https://perma.cc/3NYY-FD2L>) (showing percentage under "HISPANIC OR LATINO AND RACE—Not Hispanic or Latino, White alone" as 21.5%); ACS Data, *supra* note 76 (click on "Demographic and Housing Estimates," then filter by year ("2019") and geography ("Nevada")) (output archived at <https://perma.cc/Y9TZ-9U47>) (showing percentage under "HISPANIC OR LATINO AND RACE—Not Hispanic or Latino, White alone" as 47.8%).

preservation regulations. Noticing that Hawaii was an extreme outlier given its 100% adoption rate, we ran the statistical analysis again without including Hawaii. The r value dropped to -0.288 from -0.487, suggesting far less strength in the correlation. It may also be important to note that this correlation does not reveal anything about types of districts that are preserved as historic; the districts that are preserved may be predominately related to non-Hispanic White historical events and locations. These considerations reveal the limits of interpreting the correlation between the percentage of adoption of historic districts and the percentage of states' non-Hispanic White populations.

There are also notable correlations between the percentage of votes received for either Trump or Biden and the percentage of adoption of historic preservation regulations. These correlations are almost perfectly inverse; both correlations are 0.463 (in absolute terms) with a p -value of about 0.001.⁹¹ The correlation for the percentage of votes for Trump is negative while the correlation for votes for Biden is positive. In other words, as the percentage of voters who voted for Trump increases across states, the percentage of adoption of historic preservation regulation decreases. As the percentage of voters who voted for Biden increases across states, the percentage of adoption of historic preservation regulation also increases. While the r value for these correlations does not exceed 0.5, this correlation should still be taken seriously. Political preference seems to have some association with the percentage of adoption of historic preservation regulations.

Finally, we review the correlation between the number of local governments in the state and the rate of adoption of local historic regulation. Our analysis shows a negative correlation of -0.462, meaning that as the number of local governments increases, the rate of adoption decreases. This seems to confirm our hypothesis, based on the initial data, that municipal fragmentation may thwart local preservation regulation adoption. In this data, we noticed that Hawaii was an extreme outlier, given that it only has four local governments (with a 100% adoption rate), while the states as a whole have a mean of 628 local gov-

91. These numbers remain virtually identical (around 0.447 in absolute terms) when Hawaii is removed, as shown in Appendix II, Table 1.

ernments each. Removing Hawaii increased the r value in absolute terms, to -0.514, still demonstrating a strong correlation between the number of local governments and the rates of adoption.

3. Regressions

With nine statistically significant independent variables identified, and several of these showing potentially strong correlations with rates of preservation regulation adoption, regressions can give further insight into the relationship between these variables and strengthen (or weaken) inferences of associations between them.

In general, regressions reveal how much of the variation in the dependent variable (in this case, the percentage of a state's local governments adopting local historic preservation regulation) can be explained by the variation in the independent variable. Choosing which variables to include in a regression, and whether to use a multiple linear regression or a simple regression, is critically important for accurate data analysis. A multiple linear regression analyzes the relationships between multiple independent variables and the dependent variable.⁹² Together, these independent variables might explain the variation in the dependent variable more strongly than any single independent variable on its own.⁹³ There is a concern with "overfitting" when adding multiple independent variables to a regression. Adding more independent variables will always explain more variation in the dependent variable, but extraneous variables may confound the results of the relationship with the meaningful independent variables. Additionally, variables in a multiple linear regression may be correlated with one another, called multicollinearity, thus confounding their relationship with the dependent variable. In such a situation, a simple regression focusing on just the single, most meaningful variable is preferable to multiple linear regression.

92. Independent variables which have already been demonstrated to have no or low correlation with the dependent variable should be omitted.

93. A multiple linear regression aims to find the fewest number of independent variables that explain the variation in the dependent variables to the greatest degree. It also estimates the effect of an independent variable on the dependent variable while holding the other independent variables constant.

Of the nine demographic and property variables that are statistically significantly correlated with the percentage of adoption of historic preservation regulation, median property value is the strongest. As noted above, we hypothesized some of the remaining eight variables, such as statewide median household income, may be correlated with statewide median property value. Running an additional statistical analysis to assess this hypothesis shows that all eight variables statistically significantly correlate with median property value.⁹⁴ This correlation holds true even for a seemingly unrelated variable, the number of local governments in a state.⁹⁵ Accordingly, we determined that a multiple linear regression with any of these variables in addition to median property value is likely to be confounded. Thus, a simple linear regression between median property value (as x , the independent variable) and the percentage of local governments with historic preservation regulation (as y , the dependent variable) best suits this data. The output of the simple linear regression is reproduced below.

94. See Appendix II, Table 2.

95. Appendix II, Table 2 shows that seven of these eight variables have strong correlation (in terms of r values) and p -values of less than 0.001, while the number-of-local-governments variable has a weaker r value of -0.306, and a p -value of 0.030. As noted previously, statistically significant p -values include those less than 0.05.

Table 7. Simple Linear Regression: Median Property Value (x) and Percentage of Local Governments with Historic Preservation Regulations (y)

Residuals:

Min	1Q	Median	3Q	Max
-0.28124	-0.05624	-0.01231	0.03086	0.32791

Coefficients:

	Estimate	Std. Error	t value	Pr(> t)
(Intercept)	-1.005e-01	3.917e-02	-2.564	0.0135 *
Median Property Value	1.154e-06	1.455e-07	7.932	2.79e-10 ***

Signif. codes: 0 ‘***’ 0.001 ‘**’ 0.01 ‘*’ 0.05 ‘.’ 0.1 ‘.’ 1. Residual standard error: 0.1096 on 48 degrees of freedom. Multiple R-squared: 0.5672. Adjusted R-squared: 0.5582. F-statistic: 62.92 on 1 and 48 DF, *p*-value: 2.789e-10.

The resulting coefficient for median property value is statistically significant, with a *p*-value of effectively zero. Thus, median property value helps to explain the variation in the percentage of adoption of historic preservation regulations. The influence of this variation is, in absolute terms, fairly small. For every one dollar increase in median property value, the percentage of adoption of historic preservation regulations is expected to increase by 0.000001154%.⁹⁶ In other words, for every one hundred thousand dollar increase in median property value, the percentage of adoption of historic preservation regulations is expected to increase by 0.1154%. Still, given that states’ median property values vary by more than six hundred thousand while the rate of adoption of historic regulations is less than fifty percent in all states except Hawaii,⁹⁷ the relationship reported by the regression is significant in this context.

The *r*-squared value estimates how well the regression model fits the data overall. The adjusted *r*-squared is 0.5582, meaning 55.82% of the variation in the percentage of adoption of

96. The coefficient value, 0.000001154, reports the expected change in the dependent variable for every one unit change in the independent variable.

97. See *supra* Table 5.

historic preservation regulation can be explained by median property value. Thus, more than half of the variation in the percentage of adoption of historic preservation regulation can be explained by one variable alone. Accordingly, we will proceed with analyzing this variable—and explaining why its correlation with the percentage of local governments adopting preservation regulations makes sense.

4. The Median Property Value Factor

Of the thirteen variables tested for correlation with the rates of local historic preservation regulation, median property value had the strongest statistically significant correlation. Further, when analyzed by itself (without other confounding variables), median property value proved to explain most of the variation between states' rates of local historic preservation regulation. Given that finding, it is no wonder that so much research and public debate has explored the relationship between property values and historic preservation laws. Our research confirms that these explorations are, in fact, tackling a central question in the field.

Much of the research on this relationship centers on the formal designation of a property as historic, rather than the regulation of such properties.⁹⁸ Because local regulation of historic properties almost universally relies on formal designation, such as a listing on a register of historic places, the designation literature has relevance. Particularly useful for our purposes, this literature primarily focuses on designations in the form of local registers of historic places, which are more likely than state or federal listings to be subject to local regulation—and thus more likely to experience price effects from designation.⁹⁹

Generally, properties listed on local registers of historic places have higher property values than similar, unlisted properties.¹⁰⁰ Moreover, the values of properties in non-designated

98. One exception is a nonprofit's survey of Pennsylvania's local historic preservation laws, which found that towns with such laws had "considerably higher median value for housing." Burg et al., *supra* note 69.

99. See *infra* Part III.A.

100. Deborah Ann Ford, *The Effect of Historic District Designation on Single-Family Home Prices*, 17 AREUEA J. 353, 359 (1989) (finding a positive effect on the price of single-family homes in Baltimore from local historic district designation compared to similar non-historic districts); Peter V. Schaeffer & Cecily

neighborhoods near designated historic districts experience positive spillover effects of designation.¹⁰¹ However, the impact of historic designation on property values depends on real estate markets, the type of property being protected, the location of the property, and the nature of the designation. Local historic designation can have a negative effect on property values in areas ex-

Ahern Millerick, *The Impact of Historic District Designation on Property Values: An Empirical Study*, 5 *ECON. DEV. Q.* 301, 311 (1991) (finding an average increase of 24% on the housing value of properties in a nationally designated district, but a negative impact on property values from a local Chicago historic district designation); Douglas S. Noonan, *Finding an Impact of Preservation Policies: Price Effects of Historic Landmarks on Attached Homes in Chicago, 1990-1999*, 21 *ECON. DEV. Q.* 17, 28 (2007) (finding that “[p]roperties in landmark buildings and districts in Chicago clearly sell for higher prices than do other properties”); Yang Zhou, *The Political Economy of Historic Districts: The Private, the Public, and the Collective*, 86 *REG’L SCI. & URB. ECON.* 1, 6 (2021) (finding an 18% increase in value for properties in locally designated historic districts in Denver, Colorado); Robin M. Leichenko et al., *Historic Preservation and Residential Property Values: An Analysis of Texas Cities*, 38 *URB. STUD.* 1973, 1973 (2001) (finding that “historic designation is associated with higher property values” across Texas cities studied). One study found that properties listed on the National Register of Historic Places sold for 26% more than other homes—an interesting finding given that, as noted in Part III.A, few local governments actually impose regulatory constraints on National Register districts. Paul K. Asabere & Forrest E. Huffman, *Historic Designation and Residential Market Values*, 62 *APPRAISAL J.* 396, 396 (1994).

101. Schaeffer & Millerick, *supra* note 100 (finding an average price increase of 29% for properties adjacent to a National Register Historic District in Chicago); Noonan, *supra* note 100 (using a repeat-sales estimator to find positive proximity effects in price of properties outside of local districts); Tetsuharu Oba & Douglas Simpson Noonan, *The Price of Preserving Neighborhoods: The Unequal Impacts of Historic District Designation*, 34 *ECON. DEV. Q.* 343, 352 (2020) (finding strong positive value effects for properties just outside of local districts); Zhou, *supra* note 100, at 12 (“[L]ocal historic districts have significant spillovers to the neighboring houses regardless of whether they are of private homes or publicly accessible structures.”); Velma Zahirovic-Herbert & Karen M. Gibler, *Historic District Influence on House Prices and Marketing Duration*, 48 *J. REAL EST. FIN. & ECON.* 112, 112 (2014) (finding the price premium greater within a regulated historic district than without it, but finding that properties in the historic district sit on the market for longer than nearby properties). *But see* Douglas S. Noonan & Douglas J. Krupka, *Making—or Picking—Winners: Evidence of Internal and External Price Effects in Historic Preservation Policies*, 39 *REAL EST. ECON.* 379, 401–02 (2011) (finding a negative external price effect from local historic districts in Chicago).

periencing growth pressures, where designation triggers regulations that limit density.¹⁰² Designation can also limit the profitability, and thus the property value, of apartment buildings in high-growth areas.¹⁰³ The type of designation may matter, with price premiums for individually landmarked buildings shown in one study to be greater than the premium for landmarked districts with multiple buildings.¹⁰⁴ More definitive research on the relationships between designation, regulation, and property values across more jurisdictions is essential.

With or without any knowledge of these research findings, the general public appears to link historic preservation with higher property values. Anecdotal evidence suggests that people often initiate or acquiesce to historic designation to stabilize or increase property values. For some, though, the possibility of rising values and correspondingly higher property taxes may inspire rejection of historic designation, even when property owners have high incomes.¹⁰⁵ These issues become more complex in low-income and minority communities. Some community activists and scholars have argued that historic designation, and the regulations accompanying designation, can gentrify neighborhoods, displace existing residents, and price potential newcomers out of the area.¹⁰⁶ Others count increased property values as

102. Vicki Been et al., *Preserving History or Restricting Development? The Heterogeneous Effects of Historic Districts on Local Housing Markets in New York City*, 92 J. URB. ECON. 16, 28 (2016) (finding designation increases property values outside the borough of Manhattan and depresses values in Manhattan, where zoning allows higher development); Oba & Noonan, *supra* note 100, at 350 (finding a 3% discount on property value for locally designated historic districts in Atlanta).

103. Paul K. Asabere et al., *The Adverse Impacts of Local Historic Designation: The Case of Small Apartment Buildings in Philadelphia*, 8 J. REAL EST. FIN. & ECON. 225, 232 (1994) (finding a 24% price discount on locally designated apartments in Philadelphia).

104. Noonan, *supra* note 100.

105. *Cf.* Noonan & Krupka, *supra* note 68, at 13–14 (2010) (suggesting that the rejection of historic designation by individuals with high incomes may be a result of those individuals not wanting restrictions placed on their own home).

106. *See, e.g.*, Velma Zahirovic-Herbert & Swarn Chatterjee, *Historic Preservation and Residential Property Values: Evidence from Quantile Regression*, 49 URB. STUD. 369, 379 (2012) (describing how higher value properties in the district can lead to more displacement of low-income residents as they are priced out of the lowest valued homes in the area); David B. Fein, *Historic Districts: Preserving City Neighborhoods for the Privileged*, 60 N.Y.U. L. REV. 64, 81–87 (1985) (arguing that local historic preservation laws exclude low-income residents).

among the benefits for low-income and minority communities seeking to protect their culturally significant neighborhoods.¹⁰⁷

These debates will continue, and we must recognize that increased median property values may variously motivate or deter local historic regulation. Our statistical analysis confirms that exploring the relationship between property values and local historic regulation adoption should remain a key priority for preservationists and researchers.

III. CONTENT OF LOCAL HISTORIC REGULATION

The preceding analysis in Part II mines the local preservation regulations census developed in Part I to explore the legal, demographic, property, and political conditions correlating with the adoption of such regulations. This Part uses the same data to move from a broad analysis to a deep one. It identifies a representative sample of local jurisdictions in the census and delves into specific ordinance provisions to understand how local governments actually wield their authority to regulate.

The sample drew from the list of 2,085 certified local governments (a federally designated group of governments including cities, towns, and counties) described in Part I.B.¹⁰⁸ To receive certified status, these local governments must have a historic

107. Cf. Vincent L. Michael, *Race Against Renewal: Motives for Historic District Designation in Inner-City Chicago*, 2 FUTURE ANTERIOR: J. HISTORIC PRES., HIST., THEORY & CRITICISM 34, 37–41 (2005) (tracing the successful efforts of community activists to achieve historic designation of 338 properties in North Kenwood (compared to the original proposal of 173 properties) under Chicago's landmarks law); NED KAUFMAN, PLACE, RACE, AND STORY: ESSAYS ON THE PAST AND FUTURE OF HISTORIC PRESERVATION 12 (2009) (describing the preservation of the African Burial Ground and the Audubon Ballroom in New York City); Leland T. Saito, *From "Blighted" to "Historic": Race, Economic Development, and Historic Preservation in San Diego, California*, 45 URB. AFFS. REV. 166, 183–84 (2009) (documenting community activists' efforts to preserve the Chinese Mission, Douglas Hotel, and Clermont/Coast Hotel in San Diego, with some experiencing greater success than others); Dan Becker, *Reflecting Community Diversity at the Local Level*, 18 F.J. 28 (2004), (describing the process undertaken by the Raleigh Historic District Commission to make its preservation efforts more inclusive and more representative of the community).

108. See also *Certified Local Governments*, *supra* note 34 (showing 2,104 certified local governments and their dates of certification).

preservation commission¹⁰⁹ that regulates historic places. Identifying every fifth certified local government on the list yielded just over four hundred governments across all fifty states.¹¹⁰ Of these, 314 local governments, or about three-fourths of the proposed representative sample, post their ordinance online.¹¹¹ This subset includes a healthy range of places averaging about 78,000 people¹¹²: from tiny Arrow Rock, Missouri, with fewer than 100 people; to mid-sized cities like Portland, Maine, and Champaign, Illinois; to thirty cities with over 200,000 people including Miami, Detroit, San José, Dallas, and Phoenix.

After collecting all 314 ordinances, the research team¹¹³ pored over them to identify how they treated eighteen key characteristics listed in Table 8. This Part analyzes these characteristics in five batches, each corresponding to an area of critical importance to understanding local regulatory frameworks. It first determines how many jurisdictions regulate only properties

109. Different local governments call their historic preservation commissions by different names, such as landmarks, historic district, or historic properties commission.

110. This spreadsheet collecting the certified local governments listed all states in alphabetical order, and then all certified local governments in alphabetical order.

111. Many smaller towns, or jurisdictions in rural areas, do not have the capacity to maintain online copies of their ordinances. It would have been overly time-consuming to include these jurisdictions in the analysis here. However, the lack of inclusion of these jurisdictions raises the possibility of an undercount of the characteristics of smaller or rural jurisdictions. More broadly, the fact that these jurisdictions do not have their ordinances (or, in most cases, any information about their local preservation regulatory regimes) online calls into question whether these jurisdictions comply with the mandates of the CLG requirements to regulate historic properties. Outside of this research, others have documented the inability of ordinary people to find information about historic preservation laws online. *Cf.* Courtney Grunninger Bonney & Hadley Peterson, *Stakeholder Perceptions of the Design Regulatory Process: Implications for Their Future Relevance and Efficacy in Preservation Practice*, 11 PRES. EDUC. & RSCH. 10, 14–16 (2019) (indicating that in one of the three localities surveyed, no respondents had located the relevant ordinances on the city website, implying that they were not available through that resource).

112. Including Los Angeles County (over six million people, even after subtracting the population of Los Angeles) and Broward County raised the average population to 103,261, so these two places and the smallest two places were dropped from this average. Marblehead, Massachusetts, serves as the median with about 20,000 people. *See Annual Estimates of the Resident Population, supra* note 75.

113. This research team included the lead Author and student researchers named in the first footnote.

on the local register of historic places, and how many also regulate properties on the National Register or state registers. It then reviews the types of activities regulated, including alterations, demolitions, new construction, relocations, and maintenance. It reviews the standards used in reviewing applications, including references to federal standards on rehabilitation or other independent standards. Next it reviews whether the ordinance allows applicants to petition for a hardship exception waiving the need for full compliance. Finally, it reviews the extent to which these provisions address the pressing issue of climate change. Throughout, it highlights the interplay between local laws and state enabling authorities. Part IV summarizes the implications of the findings offered here.

Table 8. Regulatory Characteristics Collected

Variable	Response Type	Description
Regulate Local Register Properties?	Yes/No	Whether the CLG regulates properties within its own local register.
Regulate State Register Properties?	Yes/No	Whether the CLG regulates properties within the state register.
Regulate National Register Properties?	Yes/No	Whether the CLG regulates properties within the National Register.
Regulate Alteration?	Yes/No	Whether the CLG regulates alteration for historic properties.
Regulate Demolition?	Yes/No	Whether the CLG regulates demolition for historic properties.
Regulate New Construction?	Yes/No	Whether the CLG regulates new construction of historic properties.
Regulate Relocation?	Yes/No	Whether the CLG regulates relocation for historic properties.
Require Maintenance of Properties?	Yes/No	Whether the CLG requires maintenance of historic properties.
Refer to the Secretary's Standards?	Yes/No	Whether the CLG refers to the Secretary of the Interior's standards for adding historic projects to its Local Register.
What Is the Specific Criteria for Reviewing Projects?	Sentence/Paragraph	If the CLG does not refer to the Secretary of the Interior's standards, this variable describes the CLG's own standards.
Mentions Hardship Exceptions?	Yes/No	Whether the CLG mentions hardship exceptions to exempt historic property owners from certain regulations.
What Is the Specific Criteria for a Hardship Exception?	Sentence/Paragraph	If the CLG does mention hardship exceptions, this variable describes the criteria for obtaining an exception.

Mentions Climate Change?	Yes/No	Whether the CLG mentions climate change.
What Does Climate Change Mention Say?	Sentence/Paragraph	If the CLG mentions climate change, this variable describes the reference.
Mentions Renewable Energy?	Yes/No	Whether the CLG mentions renewable energy.
What Does Renewable Energy Mention Say?	Sentence/Paragraph	If the CLG mentions renewable energy, this variable describes the reference.
Date Adopted	Year	Year the CLG adopted its historical preservation municipal code provision.
Date Adopted	Year	Year the CLG adopted its historical preservation municipal code provision.
Date Last Updated	Year	Year the CLG last updated its historical preservation municipal code provision.

A. REGULATED PROPERTIES

As a foundational matter, local regulation of historic properties depends on the formal designation, or listing, of such properties on a register of historic places. This analysis outlines the scope of local regulation, articulating how many jurisdictions regulate properties on local registers, state registers, and the National Register of Historic Places.

A brief description of the designation process provides context. The listing process entails an initial application to public officials that explains why the property is historically significant, among other things. Listing on the National Register of Historic Places, for example, requires that the property be associated with significant events or significant people, demonstrate distinctive architectural characteristics, or yield important information.¹¹⁴ It also requires that the property retain sufficient

114. 54 U.S.C. § 302101; 36 C.F.R. § 60.4 (2022). Note that many commentators have noted that these criteria have often excluded the histories of people of color and low-income communities. *See, e.g.*, Michael deHaven Newsom,

integrity to convey what makes it important; it cannot be so deteriorated or altered that little or no historic fabric remains.¹¹⁵ The National Park Service, which administers the National Register, has issued thorough guidance on its designation process.¹¹⁶ As a result, many states and around 86% of local registers, according to one survey, adopt or lightly adapt the National Register criteria.¹¹⁷

Many local governments have within their boundaries properties on the National Register, as well as properties on the local and state registers. While those governments enacting historic preservation ordinances will always regulate properties on the local register, they will not necessarily regulate properties on the state and federal registers.¹¹⁸ In some cases, their authority to do so may be constrained by state enabling acts. As noted in Subsection II.A.2, only eighteen states (36% of states) expressly grant local governments the power to regulate properties on the National Register of Historic Places, while eight (16%) grant them the power to regulate properties on state registers. We speculated above that some local governments may ignore these

Blacks and Historic Preservation, 36 L. & CONTEMP. PROBS. 423, 424 (1971) (arguing that African American and immigrant history is not reflected in designation processes).

115. 54 U.S.C. § 302101; 36 C.F.R. § 60.4 (2022) (requiring “integrity of location, design, setting, materials, workmanship, feeling, and association”).

116. See *Federal Historic Preservation Laws*, NAT'L PARK SERV. 50 (5th ed. 2018), <https://www.nps.gov/subjects/historicpreservation/upload/NPS-FHPL-book-revised-final-online-3.pdf> [<https://perma.cc/PEM8-DRUS>] (outlining National Historic Preservation Act); *National Register Bulletin No. 16A, How to Complete the National Register Registration Form*, NAT'L PARK SERV. 68 (1997), <https://www.nps.gov/subjects/nationalregister/upload/NRB16A-Complete.pdf> [<https://perma.cc/C2KM-42NG>] (describing designation process for National Historic Landmarks); *National Register Bulletin No. 15, How to Apply the National Register Criteria for Evaluation*, NAT'L PARK SERV. 50 (1995), https://www.nps.gov/subjects/nationalregister/upload/NRB-15_web508.pdf [<https://perma.cc/4BMB-WRUF>] (explaining criteria for National Historic Landmarks); Patricia L. Parker & Thomas F. King, *National Register Bulletin No. 38, Guidelines for Evaluating and Documenting Traditional Cultural Properties*, NAT'L PARK SERV. 1 (1992), <https://www.nps.gov/subjects/nationalregister/upload/NRB38-Completenessweb.pdf> [<https://perma.cc/94N5-V95>] (explaining that National Historic Landmarks include traditional cultural properties).

117. Avrami et al., *supra* note 67, at 112.

118. Note that where the resource is a historic district (e.g., a collection of buildings in a neighborhood), some local governments will regulate lots within district boundaries even where those lots have not been deemed to be historic (or “contributing” to the district) themselves.

enabling acts in initially choosing whether to adopt regulations.¹¹⁹

But in delving into the actual text of local ordinances, we found that far fewer local governments regulate state register and National Register properties than have the authority to do so. Of the 314 jurisdictions surveyed, only 16% (fifty-one in total) regulate properties on the National Register of Historic Places and only 7% (twenty-three in total) regulate properties on the state register. Because many states have declined to assemble public maps of state register properties, and because National Register and state register properties do not appear together in a single map, it is impossible to easily determine whether these low numbers may be explained by a lack of such properties in the surveyed jurisdictions. A jurisdiction without properties on a state or federal register will have no need to reference them in a preservation ordinance.

Even in the absence of sophisticated maps, there may be other reasons for the limited scope of designated properties encompassed by local laws. For jurisdictions declining to regulate state or federal register properties within their boundaries, officials' reluctance may stem from the fact that listings on the National Register of Historic Places and state registers are often billed as honors that will not constrain a property owner's use of the property. The National Park Service characterizes the National Register in this manner on its website and other public documents.¹²⁰ State registers of historic places may be similarly advertised to the public.¹²¹ Local officials may be reluctant to

119. See *supra* Part II.A.3.

120. *National Register of Historic Places FAQs*, NAT'L PARK SERV., <https://www.nps.gov/subjects/nationalregister/faqs.htm> [<https://perma.cc/TNV7-95XC>] (stating that "[u]nder Federal Law, the listing of a property in the National Register places no restrictions on what a non-federal owner may do with their property up to and including destruction, unless the property is involved in a project that receives Federal assistance, usually funding or licensing/permitting," but suggesting that property owners contact the state historic preservation office for additional information about potentially applicable state or local rules).

121. See, e.g., *New York State and National Registers of Historic Places: Frequently Asked Questions*, N.Y. STATE OFF. OF PARKS, RECREATION & HISTORIC PRES. (July 2019), <https://parks.ny.gov/documents/shpo/NRFrequentlyAskedQuestions.pdf> [<https://perma.cc/GEM4-F4HH>] (stating that only projects using state or federal funds or requiring state or federal permits may be subject to restrictions); *Arkansas Register of Historic Places*, ARK. HERITAGE, <https://>

sweep properties into their regulatory orbit if property owners can claim they were unaware a designation would lead to regulation. On the other hand, these officials recognize that property owners will be more aware of proposed listings on a local register precisely because local designation will often lead to regulation. As a result, the process for adopting local regulations can be hotly contested, pitting property owners who want local-government regulation (and thus designation) against property owners who do not. Accordingly, it may not matter that only ten states require explicit consent by property owners prior to listing on a local register,¹²² because the process for adopting local regulations will almost certainly elicit involvement by property owners.

On a related matter, the statistics on the scope of federal and state register regulation at the local level offer another explanation as to why the content of state enabling statutes seem to have no effect on local governments¹²³: local governments may simply not care to regulate these types of properties. Even when they are given the authority to do so, they choose not to. As a result, the presence or absence of restrictions on regulating properties on the state and federal registers has no bearing on their decision to adopt regulations in the first place.

Finally, it is important to note that state-specific rules, enacted in response to local political conditions, can also shape the types of properties regulated. For example, California bans local preservation laws affecting religiously affiliated organizations that object to the regulation and will suffer substantial hardship,¹²⁴ while Kansas prevents localities from regulating agricultural land if doing so will have an adverse effect.¹²⁵ Similarly, Nevada—a state whose economy relies on mining—prohibits commissions from negatively impacting the “exploration, development, or extraction of mineral resources.”¹²⁶ And while the

www.arkansasheritage.com/arkansas-preservation/properties/arkansas-register [https://perma.cc/7XRU-D7VA] (“Register listing . . . in no way restricts or abridges the lawful owner’s right to use, modify or dispose of said property.”).

122. See *supra* Part II.A.1.

123. See *supra* Part II.A.3.

124. CAL. GOV’T CODE § 25373(d) (West 2021).

125. KAN. STAT. ANN. § 75-2725a (2021).

126. NEV. REV. STAT. § 384.005 (2021).

vast majority of provisions limit commissions' review to buildings, some statutes also authorize their review to extend to utility structures, mechanical equipment, and signage.¹²⁷

B. REGULATED ACTIVITIES

Turning now from the type of properties regulated to the activities regulated can shed additional light on local historic preservation laws. When scholars and practitioners talk about these laws, they universally assume they cover alterations to and demolitions of historic properties, as well as new construction within historic districts. To a much lesser extent, local regulation is thought to govern relocation and establish affirmative maintenance provisions.

Based on the careful review of 314 collected ordinances, these assumptions about the extent to which local governments encompass all five activities generally hold true. Searching for the terms “alteration” and “demolition” showed that nearly all (96% and 95% respectively¹²⁸) local ordinances expressly authorize commissions to govern both activities. This result makes sense (and may even be an undercount) given that all state enabling laws authorize local commissions to review alterations (which could be interpreted to include demolition), and thirty-one states additionally authorize the review of demolitions.¹²⁹ In

127. CONN. GEN. STAT. § 7-147f(a) (2020) (“[T]he commission shall consider, in addition to other pertinent factors, the type and style of exterior windows, doors, light fixtures, signs, above-ground utility structures, mechanical appurtenances and the type and texture of building materials.”).

128. Only one other survey, out of Pennsylvania, collected similar figures, but it limited its universe to thirty-eight ordinances with *any* mention of historic preservation. In other words, it did not look solely at historic preservation ordinances with binding regulatory reviews. This survey found 71% of towns reviewed alteration proposals, while 76% reviewed demolition requests. *See* Burg et al., *supra* note 69, at iii–iv.

129. This figure does not include those states authorizing local governments to enact a demolition delay ordinance that sets out a period of time between the filing of a demolition permit for a historic structure and the date of demolition. Only eight states explicitly allow this, offering time periods of between 30 and 365 days. In other states, individual local governments could adopt demolition delay provisions pursuant to home rule authority, where applicable. The figure also does not include statutory provisions expressly addressing owners' failure to maintain properties leading to “demolition by neglect,” a phrase used in several state statutes. *See* MICH. COMP. LAWS § 399.205(11) (2021); MISS. CODE ANN. § 39-13-15 (2021); N.C. GEN. STAT. § 160D-9-50 (2023). Demolition by ne-

88% of jurisdictions, commissions are expressly authorized to review new construction in historic districts, whether such new construction occurs on a site that “contributes” to the historical nature of the district or is a “non-contributing” site within district boundaries.

Some state-specific rules prohibit localities from regulating certain types of alterations, demolition, or new construction. Many states, for example, only allow commissions to regulate changes to the exteriors of façades visible from the public right-of-way (such as a street or sidewalk), and thus prohibit them from regulating interiors or rear facades.¹³⁰ In those states, demolition of a rear façade to install a new addition that cannot be seen from the street would be outside a historic commission’s reach. As another example, Connecticut prohibits local preservation laws that regulate exterior paint color.¹³¹ A property owner may paint her house hot pink, and no commission in the state may stop her.

Local reviews of the relocation of historic resources seemed like a less salient issue, since the vast majority of building activities related to historic places involve on-site repairs, changes, or additions. Yet 74% of jurisdictions mentioned relocation in their ordinances. In these jurisdictions, property owners can relocate a historic building or structure, subject to review by and approval from the local commission.

In the cases of alteration, demolition, new construction, and relocation, property owners actively seek permission through an application to the local preservation commission. The fifth type of activity surveyed does not involve an application process. Ra-

glect may also be considered in statutory enabling authorities on blight or nuisance prevention ordinances applicable to all properties within a local jurisdiction, not just historic properties.

130. See, e.g., CAL. GOV’T CODE § 25373(b) (West 2021) (extending regulating power to municipalities over the “appearance of neighboring private property within [the] public view”); GA. CODE ANN. § 44-10-28(c) (2020) (“[T]he commission shall not consider interior arrangements or uses having no effect on exterior architectural features”); IND. CODE § 36-7-11-5 (2021) (“[T]he commission may not consider details of design, interior arrangements, or building features if those details, arrangements, or features are not subject to public view”); S.D. CODIFIED LAWS § 1-19B-44 (2021) (prohibiting regulations of interiors).

131. CONN. GEN. STAT. §§ 7-147d(c), -147s(c) (2020).

ther, it requires property owners to maintain their historic properties to a certain standard on an ongoing basis. Affirmative maintenance provisions enable a local government to prevent a property owner from neglecting a structure so badly that it deteriorates beyond repair and must be demolished. These requirements—commonly thought to be somewhat rare—actually appear in 68% of ordinances surveyed. The prevalence of these requirements within historic preservation ordinances is surprising given the paucity of litigation enforcing such provisions against property owners. The extent to which local officials enforce or threaten enforcement of affirmative maintenance requirements, possibly avoiding formal litigation, merits further study.

C. STANDARDS OF REVIEW

With that understanding of what types of properties and activities are regulated, one may ask what standards local historic preservation commissions use in reviewing applications for alterations, demolitions, new construction, or relocation of properties regulated.¹³² Knowing the criteria they use in their reviews can reveal whether these local ordinances operate in a similar manner. It can also inform research on the impact of criteria on the built environment, on rates of approval, and even on the number of applications filed.

State enabling authority does not generally provide specific guidance as to the standards to be used during the review process, beyond general language that a local government may determine whether a particular activity is “appropriate.”¹³³ Some state statutes offer more detailed criteria. The Connecticut statute, for example, says that:

In passing upon appropriateness as to exterior architectural features the commission shall also consider, in addition to any other pertinent

132. This Section omits consideration of affirmative maintenance provisions, which aim to prevent demolition by neglect and do not require a property owner application. *See supra* note 129 (discussing demolition by neglect statutes).

133. Fifteen states provide that local governments may issue “certificates of appropriateness” when opining on applications. Four states expressly allow the local government to decide on these criteria particular to the historic features within their town, city, or county. ME. STAT. tit. 30-A, § 5730 (2019); MONT. CODE ANN. §§ 90-1-160 to -164, -167 to -169 (2021); NEB. REV. STAT. §§ 14-2001 to -2004; 19-901 (2021); NEV. REV. STAT. § 384.005 (2021).

factors, the historical and architectural value and significance, architectural style, scale, general design, arrangement, texture and material of the architectural features involved and the relationship thereof to the exterior architectural style and pertinent features of other buildings and structures in the immediate neighborhood.¹³⁴

Beyond the statutory criteria (or lack thereof), a set of federal standards for rehabilitation projects are often said to be widely adopted as the local standard of review. The Secretary of the Interior's Standards for the Rehabilitation of Historic Properties (the Standards) cover a broad range of construction activities, including alterations, demolition, and new construction.¹³⁵ They apply to projects receiving federal funding from the National Historic Preservation Fund,¹³⁶ projects receiving federal preservation tax credits,¹³⁷ and other projects funded or permitted by federal agencies. The Standards themselves consist of just seventeen sentences, broadly worded to establish the kinds of techniques and materials that must or may be used by property owners.¹³⁸

Interestingly, only 176 local governments surveyed (56%) expressly refer to the Secretary's Standards. Admittedly, this survey may undercount jurisdictions using the Standards, given that it only counts local ordinances referencing the Standards by name, but not whether the Standards appeared in supplemental guidance outside of the ordinance.¹³⁹ Even so, the figure seems surprisingly low given how many people have assumed widespread formal adoption of the Standards. This assumption appears frequently, for example, in research criticizing the Standards for being overbroad, lacking adaptability to meet modern

134. CONN. GEN. STAT. § 7-147f(a) (2020). It also makes further qualifications for parking spaces. *Id.*

135. *The Secretary of the Interior's Standards for Rehabilitation*, NAT'L PARK SERV., <https://www.nps.gov/subjects/taxincentives/secretarys-standards-rehabilitation.htm> [<https://perma.cc/2LEA-YFDH>].

136. 36 C.F.R. § 68.1 (2022).

137. *Id.* § 67.7(a). Note that the Standards for tax credit projects are codified at 36 C.F.R. § 67.7(b) (2022).

138. *Id.* § 67.7(b)(1)–(10).

139. See, e.g., *Guidelines Introduction*, CITY OF NEW ORLEANS HISTORIC DIST. LANDMARKS COMM'N 6 (2010), <https://nola.gov/nola/media/HDL/01-Introduction.pdf> [<https://perma.cc/27UH-Y8NL>] (referencing the Standards in a document supplementing the local ordinance).

challenges (such as climate change), or supplanting context-sensitive approaches more appropriate for the local area.¹⁴⁰ The figure also seems surprisingly low given that the ordinances surveyed belonged to certified local governments, which often receive federal government technical assistance on matters relating to their review processes. It may well be that had the survey included non-certified local governments, the percentage referencing the Standards would have been even lower.

Jurisdictions not adopting the Standards take different approaches in establishing standards of review. Palmyra, Wisconsin (population 1,800¹⁴¹), for example, allows its commission to reject an application for a certificate of appropriateness for an alteration only if “the proposed work would detrimentally change, destroy or adversely affect any exterior feature of the improvement or site upon which said work is to be done,” and requires the commission to approve applications for demolition unless the building is “of such architectural or historical significance that its demolition would be detrimental to the public interest and contrary to the general welfare of the people of the Village and State.”¹⁴² This approach seems to favor the issuances of approvals, though it is likely a rural town with such a small population sees project applications infrequently. Dallas similarly requires its commission to approve an application unless the proposed work will adversely affect the character of the dis-

140. See Sara C. Bronin, *Adapting National Preservation Standards to Climate Change*, in *PRESERVATION, SUSTAINABILITY, AND EQUITY* 165, 166–67 (Erica Avrami ed., 2021) (criticizing the Standards’ application to climate change cases but asserting that “[i]ndeed, the Standards have been adopted into law by state legislatures, tribal governments, and local historic district commissions all over the country,” so their wording and interpretation “have ripple effects on preservation at every level”); S.F. BAY AREA PLAN. & URB. RSCH. ASS’N, *HISTORIC PRESERVATION IN SAN FRANCISCO: MAKING THE PRESERVATION PROCESS WORK FOR EVERYONE* 19–21 (2013) (reviewing San Francisco’s historic preservation program, criticizing the Standards for being overbroad and causing slowdowns in reviews, and urging adoption of design guidance); Shantia Anderheggen, *Four Decades of Local Historic District Designation: A Case Study of Newport, Rhode Island*, 32 *PUB. HISTORIAN* 16, 28–30 (2010) (noting that relying on the Standards is common practice, but it prevents local governments like Newport from developing location-specific design guidelines that protect vernacular architecture).

141. See *Annual Estimates of the Resident Population*, *supra* note 75.

142. PALMYRA, WIS., CODE § 15.04 4(b)(2) (2022).

trict; the architectural features of the structure; or the preservation, maintenance, and use of the structure or district.¹⁴³ Still other places establish a series of factors for a commission to weigh. Hanover County, Virginia (population 107,000¹⁴⁴), requires its architectural review board to weigh six factors before issuing a certificate of approval, including the structure's significance; the "general design, arrangement, shape, texture, material, color, and fenestration of the building or structure"; the compatibility of the proposal with the district's character; and the extent to which a denial would deprive the owner of "reasonable use" of her property.¹⁴⁵

On the surface, these illustrative examples, and the dozens more collected in our survey, suggest differences in approaches, with some allowing more flexible and relaxed standards than others. On the other hand, they all generally evaluate the impact of the proposed activity on either the historic property or its surroundings. In any event, the written standards of review only tell part of the story. Commissions may adhere to them faithfully, drawing from precedent in prior decisions to ensure fair and consistent treatment for each application. They may apply them unevenly, benefiting some types of property owners but not others.¹⁴⁶ Or they may disregard them altogether, as hundreds of my historic preservation law students over the years have reported in their assignments observing commission meetings. Staff budget and capacity—which dictate whether the local government can provide administrative support and technical guidance to commissioners—may influence both approaches and outcomes.¹⁴⁷ Further research evaluating the extent to which

143. DALLAS, TEX., CITY CODE § 51A-4.501(d)(5) (2023).

144. See Annual *Estimates of the Resident Population*, *supra* note 75.

145. HANOVER COUNTY, VA., CODE § 26-220(a) (2023).

146. See, e.g., Denise Lawrence-Zúñiga, *Bungalows and Mansions: White Suburbs, Immigrant Aspirations, and Aesthetic Governmentality*, 87 ANTHROPOLOGICAL Q. 819, 819–20 (2014) (arguing that historic district design guidelines wrongly impose "white" design aesthetics on Chinese immigrant property development aspirations in Alhambra, California); see also Bonney & Peterson, *supra* note 111, at 18 (surveying stakeholder perceptions of design guidelines in three South Carolina towns and finding difficult interactions with historic commissions and overly strict application of the design standards).

147. The National Alliance of Preservation Commissions conducted two unpublished surveys, one in 1998 and one in 2009, surveying various practical aspects of the commissions' functioning, including budget and staffing, with the

commissions adhere to or deviate from their written standards is needed.

D. HARDSHIP EXCEPTIONS

This survey has so far revealed that while local governments overwhelmingly regulate similar types of properties (those listed on local registers of historic places) and similar types of activities (alteration and demolition universally), the standards of review differ more than expected. When property owners wish to deviate from these standards, or be free of regulatory review altogether, some local ordinances allow them to apply for so-called “hardship exceptions.” To be granted a hardship exception, the property owner generally must prove that fully applying the historic preservation ordinance will create a burden for them that can be overcome in no other way but releasing them from full compliance.

State enabling statutes sometimes, but not always, expressly allow for hardship exceptions.¹⁴⁸ Even in the absence of clear state statutory guidance, the practice of allowing some property owners to avoid full application of a local preservation ordinance seems to have caught on. Of the 314 ordinances surveyed here, 172 (56%) mention hardship.¹⁴⁹ Of these, 167 set forth specific criteria for proving hardship in the regulations.¹⁵⁰

1998 survey finding that less than half received both clerical and professional staff support and about two-thirds had an annual budget of \$5,000 or less. NAT'L ALL. OF PRES. COMM'NS, *supra* note 41, at 20.

148. See, e.g., CAL. GOV'T CODE § 25373(d) (West 2023) (exempting religious institutions from compliance if they suffer substantial hardship either financially or pertaining to their religious mission, or both); 55 ILL. COMP. STAT. 5/5-30011(11) (2023) (granting the Preservation Committee authority to consider certificates of economic hardship); LA. STAT. ANN. § 25:739 (2023) (allowing “hardship variances”).

149. Note that the search did not include the term “variance,” which would be offered to applicants seeking relief from historic preservation provisions provided through local zoning authority. Accordingly, the 56% may undercount the amount of relief provided to property owners.

150. A journal article discussing the adoption of Atlanta’s historic preservation ordinance in the late 1980s recounted a survey completed at the time of economic hardship exemptions in ordinances around the country. It found that “[v]irtually no city had specifically defined what was meant by economic hardship. In most cities, hardship was defined by the commission responsible for historic preservation on a case-by-case review basis.” Michael Elliott, *Reconceiving Historic Preservation in the Modern City: Conflict and Consensus Building*

The survey reveals that for the most part, these criteria require a property owner to prove *economic* hardship. Owners can prove this by showing the amount paid for the property, the property's assessed value, real estate taxes, debt service, listings of offers to sell or rent the property, financial information relating to income and expenses on the property, and more.¹⁵¹ They might also be required to show opinions from an architect or engineer, cost estimates for the proposed activity versus full compliance, or appraisals.¹⁵² Or they might be required to prove the form of ownership or operation of the property.¹⁵³ Economic hardship might be based on the property's decay or obsolescence,¹⁵⁴ or might be based on the property's inability to yield a reasonable economic return.¹⁵⁵ A handful of jurisdictions define hardship to be the equivalent of an unconstitutional taking—a high bar given the fact that few takings challenges to preservation cases have ever been successful.¹⁵⁶ Whatever the standard used to evaluate the property owner's hardship, the commission

in Atlanta, 16 J. ARCHITECTURAL & PLAN. RSCH. 149, 158 (1999). Forty years later, it seems, the reverse is now true, in that virtually all cities at least attempt to define what hardship means.

151. See, e.g., COLUMBIA, ILL., MUN. CODE § 15.64.210(B) (2006) (outlining these criteria).

152. See, e.g., PORTLAND, ME., LAND USE CODE § 17.9.2(B) (2023) (outlining these factors as considerations in granting hardship applications).

153. See, e.g., CONWAY, S.C., UNIFIED DEV. ORDINANCE § 14.1.3(J)(3)(e) (2011) (requiring proof of “form of ownership or operation of the property” in applications for hardship variances).

154. See, e.g., MONMOUTH, OR., CODE § 18.160.050(6) (2023) (“An alteration required because of a defect or deterioration in the structural or environmental systems of the historic resource shall be given greater deference.”); SALINAS, CAL., CODE § 3-02.06(c)(4) (2023) (allowing an exception where due to property conditions rehabilitation is “infeasible from a technical, mechanical, or structural standpoint”).

155. See, e.g., BANGOR, ME., CODE § 148-9(E) (2023); TAYLOR, ARIZ., CODE § 15.15.090 (2023); SAG HARBOR, N.Y., CODE § 300-13.5(M)(1) (2023).

156. See, e.g., ROCHESTER, N.H., CODE § 275-14.13(A) (determining hardship where “refusing to allow the property owner to demolish the property would result in a violation of the prohibitions of the United States and New Hampshire Constitutions against taking of private property for public use without just compensation”); PINELLAS COUNTY, FLA., CODE § 146-1 (2023) (defining “[u]ndue economic hardship” as “an onerous and excessive financial burden that would be placed upon a property owner by the failure to issue a certificate of appropriateness for demolition, thereby amounting to the taking of the owner’s property without just compensation”).

may additionally have to make a determination that the variance will be in harmony with the district or still enable fulfillment of the intent of the ordinance.¹⁵⁷

Some ordinances prevent property owners that created their own hardship from receiving a hardship exception. The most common example of a self-created hardship is a property owner who neglected a historic building to the point where it would be deteriorated (a demolition by neglect). Bainbridge, Georgia (population 12,000¹⁵⁸), simply states that “[a]n undue hardship shall not be a situation of the person’s own making.”¹⁵⁹ In jurisdictions prohibiting self-created hardships, the property owner has no choice but to fully comply with the ordinance.

Overall, hardship exceptions are more common than expected, with robust articulation of criteria for proving the hardship. While these exceptions provide a relief valve for property owners, they also create the possibility that the local ordinance may be unevenly applied. Moreover, commissions may be more willing to give hardship exceptions to some types of property owners than others. Given that our survey confirms hardship exceptions’ widespread incorporation into ordinances, their operation deserves further analysis.

E. CLIMATE CHANGE

Concluding the analysis of the content of local historic regulations is a survey of the extent to which the 314 studied ordinances take into account concerns about climate change, including provisions for renewable energy.

Climate concerns have risen to the top of national advocacy agendas from the National Trust for Historic Preservation, the U.S. Advisory Council on Historic Preservation, and the National Park Service, among others.¹⁶⁰ Architect Carl Elefante

157. See, e.g., WHEELING, W. VA., CODE § 173.09(i) (2022) (noting that the variance must “remain in harmony with the general purpose and intent of the provisions”).

158. See *Annual Estimates of the Resident Population*, supra note 75.

159. BAINBRIDGE, GA., HISTORIC PRES. ORDINANCE § 27 (2005).

160. *Goal 5: Climate Resilience*, NAT’L TR. FOR HISTORIC PRES., <https://savingplaces.org/goal-climate-resilience> [<https://perma.cc/Z7W6-CPKZ>]; *ACHP Climate Change and Historic Preservation Policy Statement*, ADVISORY COUNCIL ON HISTORIC PRES. (June 16, 2023), https://www.achp.gov/sites/default/files/policies/2023-06/Climate%20Change%20Policy%20Statement-final_0.pdf

framed the relationship between preservation and sustainability well when he wrote that “[t]he greenest building is . . . one that is already built.”¹⁶¹ Given the embodied energy contained in buildings, it takes ten to eighty years for a new, energy efficient building to neutralize the climate impacts of its construction.¹⁶² While the preservation of historic buildings supports the mitigation of climate change, there is also the need to prepare such structures for the negative impacts of changing conditions. This includes preparing historic buildings for sea level rise, rising temperatures, and extreme weather. A 2014 report by the Union of Concerned Scientists analyzes the specific threats faced by many of the nation’s most significant historic landmarks.¹⁶³ Physical interventions range from raising historic buildings above predicted sea level rise and storm surge heights and modernizing energy systems. The National Park Service has published preservation briefs on the upgrading of heating and cooling systems and repairing and improving energy efficiency in historic wood and metal windows.¹⁶⁴ The Park Service also provides guidance on elevating structures and the appropriate incorporation of solar panels and other green technologies in historic properties to reduce a building’s energy consumption.¹⁶⁵

[<https://perma.cc/AF5L-PUCB>]; *Climate Change and Your National Parks*, NAT’L PARK SERV. (Oct. 5, 2021), <https://www.nps.gov/subjects/climatechange/index.htm> [<https://perma.cc/8DSX-NVWB>].

161. Carl Elefante, *The Greenest Building Is...One That Is Already Built*, 21 F.J.: J. NAT’L TR. FOR HISTORIC PRES. 26, 26 (2007).

162. *The Greenest Building: Quantifying the Environmental Value of Building Reuse*, NAT’L TR. FOR HISTORIC PRES. 84 (2011), https://cdn.savingplaces.org/2023/05/24/11/14/36/697/The_Greenest_Building_Full.pdf [<https://perma.cc/M2ZU-GHU8>].

163. Debra Holtz et al., *National Landmarks at Risk: How Rising Seas, Floods, and Wildfires Are Threatening the United States’ Most Cherished Historic Sites*, UNION OF CONCERNED SCIENTISTS (2014), <https://www.ucsusa.org/sites/default/files/2019-09/National-Landmarks-at-Risk-Full-Report.pdf> [<https://perma.cc/Q7P2-LMSS>].

164. *Preservation Briefs, Technical Preservation Services*, NAT’L PARK SERV., <https://www.nps.gov/orgs/1739/preservation-briefs.htm> (Dec. 15, 2022) [<https://perma.cc/2XLR-FGEN>].

165. Jenifer Eggleston et al., *The Secretary of the Interior’s Standards for Rehabilitation & Guidelines on Flood Adaptation for Rehabilitating Historic Buildings*, U.S. DEP’T OF THE INTERIOR, NAT’L PARK SERV., TECH. PRES. SERVS. 74–108 (2021), <https://www.nps.gov/orgs/1739/upload/flood-adaptation-guidelines-2021.pdf> [<https://perma.cc/7EGB-4JNC>]; Anne E. Grimmer et al., *The Secretary of the Interior’s Standards for Rehabilitation and Illustrated*

Despite this growing recognition of climate change at the national level, no state statutes require local governments to incorporate climate change into their preservation ordinances. A handful of state laws address renewable energy technology, but only two states require local historic commissions to actually incorporate this technology into their decisions. Connecticut's enabling act prohibits commissions from denying a certificate of appropriateness for any "exterior architectural feature, such as a solar energy system, designed for the utilization of renewable resources . . . [unless it] cannot be installed without substantially impairing the historic character and appearance of the district."¹⁶⁶ Taking a different approach, Washington's enabling act authorizes commissions to protect access to direct sunlight for solar energy systems.¹⁶⁷ A third enabling act, in Massachusetts, declines to mandate particular outcomes but requires commissions to "consider the policy of the commonwealth to encourage the use of solar energy systems and to protect solar access."¹⁶⁸ This encouragement does not appear to have been effective in compelling Massachusetts towns to include solar system provisions in their ordinances, as none of the surveyed towns do.

Indeed, even taking into account the possibility that climate change is a new issue for preservation practitioners, the dearth of local regulations accounting for climate change or renewable energy is troubling. Only one ordinance of the 314 studied ordinances (0.33%) addressed climate change in the context of historic preservation. Cooperstown, New York, incorporates climate concerns into its guidelines for approval of certificates of appropriateness, stating, "[t]he conservation and improvement of existing built resources, including reuse of historic and older buildings, greening the existing building stock, and reinvestment in older and historic communities, are important components of energy conservation and combating climate change."¹⁶⁹ Yet this ordinance merely recognizes the relationship between climate

Guidelines on Sustainability for Rehabilitating Historic Buildings, U.S. DEP'T OF THE INTERIOR, NAT'L PARK SERV. TECH. PRES. SERVS. 13–19 (2011), <https://www.nps.gov/orgs/1739/upload/sustainability-guidelines.pdf> [<https://perma.cc/MEM4-ZVMB>].

166. CONN. GEN. STAT. § 7-147f(a) (2023).

167. WASH. REV. CODE § 35.63.080(c) (2023).

168. MASS. GEN. LAWS ch. 40C, § 7 (2022).

169. COOPERSTOWN, N.Y., CODE § 300-26(E)(5) (2022).

change and historic preservation, and fails to mandate any particular outcomes. It is possible that some localities have addressed climate issues in design guidelines adopted separately from the historic preservation ordinance and this not part of our review scope.

Ordinance provisions more specifically covering renewable energy technology are more common and in some cases are more robust. Found in eighteen ordinances (5.88%), references to renewable energy technology are as limited as requiring certificates for appropriateness for the installation of solar panels or as broad as encouraging green building practices in preservation projects. Hollis, New Hampshire, takes the limited approach, simply requiring that solar panels be “approved by the Historic District Commission.”¹⁷⁰ Arcadia, Florida, demonstrates the broader approach, stating, “[t]he application of sustainable, energy efficient and green building practices to improvements associated with historic properties is encouraged whenever they are compatible with best historic preservation practices.”¹⁷¹ Arcadia’s ordinance qualifies this encouragement with requirements that machinery does not visually or physically impact character defining features. Only a few ordinances reviewed in this study include language addressing overall efficiency and green building practices; most of these only narrowly mention approval criteria for solar panels and other common technology. Thus, while some municipalities are beginning to adopt a more comprehensive approach to energy conservation in historic buildings, most have not looked past the visual impacts of solar panels.

Overall, this survey finds that the vast majority (95%) of certified local governments studied do not include any reference to climate change or renewable energy technology in their historic preservation ordinances. The minority including such language most often only considers the visual impact of solar panels. Though others have recognized the need for local governments to incorporate climate concerns,¹⁷² this survey reveals for the

170. HOLLIS, N.H., ZONING ORDINANCE § XVII(E)(9) (2023).

171. ARCADIA, FLA., CODE § 11-14-004(D)(5) (2021).

172. See, e.g., Bonney & Peterson, *supra* note 111, at 20 (recommending that ordinances better accommodate green building and energy conserving changes to historic buildings).

first time how few ordinances incorporate them now. Local governments would do well to use the extensive national resources available on the connection between historic preservation, carbon emissions reduction, mitigation, and adaptation to forge a more resilient future for historic places.

IV. LEGAL THEORY

Given this exhaustive sweep through state enabling laws, local preservation ordinances, and demographic and political conditions, we conclude by drawing three broad lessons that may bear on local administrative legal theory.

A. A COMMON LAW OF LOCAL HISTORIC REGULATION

Local historic preservation ordinances share key characteristics, despite their independent adoption by over 3,500 local governments across the country¹⁷³ and despite differences in state enabling statutes.¹⁷⁴ They universally regulate properties listed on local registers of historic places, and they generally decline to regulate properties on the National Register or state equivalents.¹⁷⁵ Nearly all regulate both alteration and demolition, while nine out of ten address new construction.¹⁷⁶ Three-quarters regulate relocation, while over two-thirds require maintenance.¹⁷⁷ And very few, less than 6%, address climate change or renewable energy.¹⁷⁸

Admittedly, the survey reveals that only 56% of ordinances expressly reference federal standards on rehabilitation, suggesting a degree of dissonance among local rules. However, many local governments incorporate such standards in guidance or adapt them slightly to local condition rather than incorporate them explicitly by name. Additionally, the survey demonstrates that only 56% of ordinances include provisions on economic hardship.¹⁷⁹ Although this figure implies that hardship provisions are not universal, it likely undercounts the availability of other

173. *See supra* Part I.B.

174. *See supra* Part II.A.1.

175. *See supra* Part III.A.

176. *See supra* Part III.B.

177. *See supra* Part III.B.

178. *See supra* Part III.E.

179. *See supra* Part III.D.

forms of relief available to applicants, including zoning variances.¹⁸⁰ With respect to both the standards of review and economic hardship exceptions, a clear majority of jurisdictions maintains such provisions, and an undercount seems likely. Therefore, we do not believe they significantly diminish the overall assessment that local preservation ordinances share many common features.

In considering the implications of these revelations, we join Gillian Metzger in arguing that courts should recognize administrative common law.¹⁸¹ In a 2012 article, she focused on the federal context, arguing that Supreme Court precedent in *Erie Railroad Co. v. Tompkins*, which stated that “[t]here is no federal general common law,” should be reconsidered given the evolution of administrative law doctrines and the lack of fidelity to *Erie*’s holding.¹⁸²

Likely drawing from *Erie*, courts have been reluctant to admit that local administrative law has generated common law either. Michael Allan Wolf proposed a different view in his 2019 article arguing for recognition of “a common law of zoning.”¹⁸³ He noted that zoning enabling statutes across all fifty states—which allow local governments to exercise zoning authority—share fundamental characteristics, even if they deviate in certain particulars.¹⁸⁴ He also observed that courts have generated a significant volume of decisions in which they articulate the same principles from one jurisdiction to another.¹⁸⁵ Support for the development of a common law for zoning is also reflected in the near-completion of the zoning volume of the Fourth Restatement of Property Law, a project that aims to articulate the common law.¹⁸⁶

180. *See supra* note 149.

181. Gillian E. Metzger, *Foreword: Embracing Administrative Common Law*, 80 GEO. WASH. L. REV. 1293 (2012).

182. *Id.* at 1342.

183. Michael Allan Wolf, *A Common Law of Zoning*, 61 ARIZ. L. REV. 771, 771 (2019).

184. *Id.* at 787–88 (“By the middle of the twentieth century, every state had enacted state legislation that tracked very closely with the [Standard State Zoning Enabling Act], incorporating, often with only minor variations, components found in each of the nine sections of the model act.”).

185. *Id.* at 792 (recognizing five components of the common law of zoning).

186. *Restatement of the Law Fourth, Property*, AM. L. INST., <https://www.ali.org/projects/show/property> [<https://perma.cc/PA3P-T8N6>] (illustrating the progress of the Land Use volume of the project).

Like zoning, historic preservation regulation is squarely an exercise of local administrative law. Additionally, like state zoning enabling statutes, preservation enabling statutes have been enacted in all fifty states, and while not precisely alike, they create the same basic regulatory framework. Local historic preservation ordinances universally incorporate this framework, as this survey definitively reveals. Administrative law scholars should expand upon this survey by reviewing judicial treatment of local preservation laws, as they have done with the analogous sphere of zoning laws, to fortify the argument that administrative common law already exists and is quite robust.

B. TENSION IN OUR FEDERALIST SYSTEM

This survey of local historic preservation regulation challenges our understanding of federalist dynamics among federal, state, and local actors. There is an assumption that local governments will abide by the expectations created by federal and states governments. In several limited but important ways, local governments enacting historic preservation ordinances deviate from these expectations.

First, local governments sometimes exercise regulatory powers beyond those expressly provided by the state enabling statute. For example, some have flexed their home rule authority to expand the types of properties governed by their ordinance.¹⁸⁷ Localities that take this route do not act illegally. However, by venturing beyond scopes specifically outlined in statute, they may challenge the importance of state enabling laws. Our statistical analysis showing that the content of state enabling authorities has little bearing on rates of adoption of local historic preservation regulation within the state further challenges their importance.¹⁸⁸ With this revelation, state legislators may be left wondering why they bothered to establish subject-matter-specific rules at all. Enabling authority may still have a signaling function, showing local governments that it is acceptable to regulate in the sphere. It may also have a guiding function, showing local governments how to regulate. But given home rule authority, enabling laws do not necessarily determine the content of local laws in the same regulatory sphere.

187. See *supra* text accompanying notes 63–65.

188. See *supra* Part II.A.

Second, local governments sometimes regulate in ways that fly in the face of federal expectations. For example, any local government among the admittedly small group (16% of localities) regulating National Register properties undermines federal-government rhetoric that designation on the National Register is merely honorific and does not affect private activity on a parcel.¹⁸⁹ National Park Service officials may correctly fear that local-government regulation of National Register properties will discourage owners from placing their properties on the register, or at least not objecting to them.¹⁹⁰ Some owners may wish to have a plaque on their home, participate in the civic project of creating a historic district, and/or reap the economic and reputational benefits of designation, but not wish for their friends and neighbors to have a say over their property when they wish to make changes to it. Those owners may gravitate to National Register designations, rather than locally designated districts, precisely to avoid a commission's reach. Property owners may acquiesce to state register designations on similar grounds. While, again, not illegal, local governments that regulate National Register and state register properties strain their relationship with the federal government.

Third, local governments can take actions that are inconsistent with federal and state government policy goals. Recognizing that any policy will have a political dimension and that there will always be myriad different and even competing goals, it remains very clear that climate change has captured the attention of public officials. State governments and the federal government have prioritized adaptation strategies that allow communities (and their buildings) to be adapted to respond to change climate. They have also prioritized mitigation strategies, including the installation of renewable energy systems, which reduce greenhouse gas emissions. The 95% of local governments that have not yet incorporated climate concerns into their local ordinances or secondary documents, such as design guidelines, may

189. *See supra* Parts II.A.2, III.A.

190. The owners of individual properties nominated for listing on the National Register, or the owners of a majority of properties within a district nominated for listing on the National Register, can submit a written, notarized statement to the State Historic Preservation Office requesting that the property stay off of the National Register. 36 C.F.R. § 60.6(g) (2022). However, once the Keeper of the National Register determines that the property is eligible for listing, it will be placed on a separate list of eligible properties. *Id.* at 60.6(v).

not be keeping up with state and federal policy priorities. It seems unlikely that either the federal government or any state government will require local governments to update their historic preservation regulations to address these issues. In the absence of voluntary local action, one wonders how the tension will ultimately be resolved.¹⁹¹

This survey has revealed that although local governments generally work within the legal framework offered by state governments and adhere to federal expectations, in several ways they deviate from that framework and those expectations. Understanding the contours of these deviations deepens our understanding of local administrative law.

C. REGULATORY STASIS EXPOSED

Local governments have long been thought to be laboratories of innovation. In the context of local historic preservation regulation, however, this is not necessarily true. Local preservation laws are so similar, as argued above, that we should recognize a common law in interpreting them.¹⁹² Moreover, local governments seem unwilling to respond to changing external conditions, including climate change and its ongoing impact on historic places.¹⁹³

We contend that a kind of regulatory stasis has gripped local governments, at least in the historic preservation arena. This may be best illustrated by the level of regulatory activity in adopting and amending preservation regulations. As part of the survey of 314 local regulations described in Part III, the dates on which the ordinance was adopted or last amended were collected, though only where they were easily accessible. Of the surveyed jurisdictions, 105 jurisdictions with easily accessible information had an average date of adoption of 1990,¹⁹⁴ while 172 jurisdictions had an average date of most recent amendment of 2012.¹⁹⁵ The average date of adoption—a relatively recent three decades ago—helps to explain why the numbers in the census tallied in Part I have increased. The average date of the most recent

191. *But see infra* Part IV.C.

192. *See supra* Part IV.A.

193. *See supra* Part IV.B.

194. The median figure is 1989.

195. The median figure is 2015.

amendment, within the decade preceding our tally, makes it appear as if local governments are at least in some respects responding to changing conditions.

However, one can reasonably assume that these numbers make adoption and amendment rates appear more current than reality. This data is far from complete, given that two-thirds of jurisdictions did not provide easily accessible information about the date of adoption, and nearly half failed to provide information about the date of last amendment. It may be that the two-thirds of jurisdictions lacking information about adoption dates adopted their ordinances so long ago they were incorporated into municipal codes without notation, contrary to modern practice. It may also be that ordinances not including amendment dates may never have been amended at all after adoption, meaning that the last time anyone looked at them was 1990, or earlier. In addition, it bears noting that often amendments are made to add the names of newly created local historic districts, and not to expand or refine substantive regulations. More study by others might help us understand the frequency and timing of adoptions across a broader continuum.

One might explain the regulatory stasis by pointing to the fact that local governments are notoriously resource-constrained, and that historic preservation simply does not rise to a high level of importance. Indeed, the local governments with historic regulation tend to run the gamut in terms of population size, with a median population of just 20,000 people.¹⁹⁶ Communities with this population size may not necessarily have the ability to review and amend their regulations over and over again. There might also be reluctance to open a political process that may result in a weakening or even a repeal of an existing preservation ordinance. Or they may have just a small number of regulated properties, though proof of the physical scope of all these local laws will have to wait for another day.

CONCLUSION

Local governments influence whether our history endures through powerful commissions that govern private property. Despite their prevalence and significance, we know very little about these commissions or the laws under which they operate. This

196. *See supra* note 112.

Article presents the first national study of local historic preservation regulations and their state enabling statutes. It identifies where historic districts have been adopted and explores how rates of adoption change from state to state depending on various independent variables. It delves into the content of local historic preservation laws, confirming some commonly held beliefs while debunking others. As the first study of its kind, this Article is uniquely positioned to make observations about its impact on administrative legal theory—engaging in broader discussions about federalism and the slow pace of legal change.

But this Article shows only the iceberg's tip. Given that the number of communities with historic preservation regulation is only increasing, we must devote more scholarly attention to understanding and evaluating this regulatory sphere.¹⁹⁷ This research invites further advocacy supporting investments in spatial mapping for local districts and critical changes to incorporate climate concerns. It also creates a baseline for further research on the value of “[c]itizens, rather than career bureaucrats” making decisions,¹⁹⁸ the way regulation is actually viewed by the people regulated by it,¹⁹⁹ the use of economic hardship provisions to provide relief, and analysis of the decisions themselves. How many solar panels were actually denied? How many affordable housing projects actually stopped? By providing this baseline, this Article helps ensure that future debates about local preservation become more grounded in facts—something that will benefit all working to strike the right balance between constraints on private activity and the public benefits that preserving historic assets offers.

197. Sara C. Bronin, *Research Directions for Historic Preservation Law*, in *A RESEARCH AGENDA FOR LAND USE AND PLANNING LAW* (Sarah Schindler & John Infranca eds., forthcoming 2023).

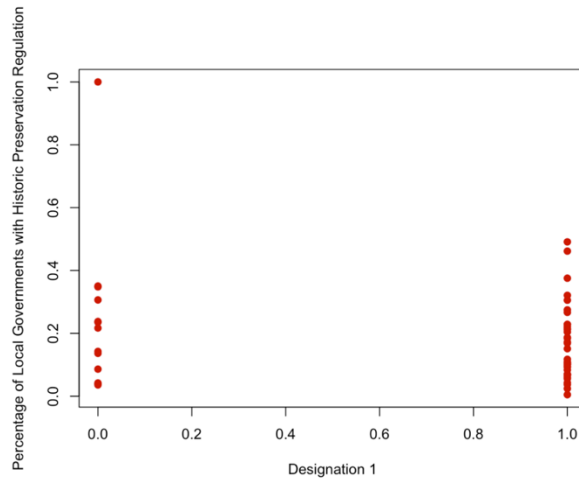
198. David A. Lewis, *Identifying and Avoiding Conflicts Between Historic Preservation and the Development of Renewable Energy*, 22 N.Y.U. ENV'T L.J. 274, 356 (2015).

199. See Heuer, *supra* note 29 (discussing a New Haven historic neighborhood and describing how residents viewed, complied with, and/or ignored local historic regulations).

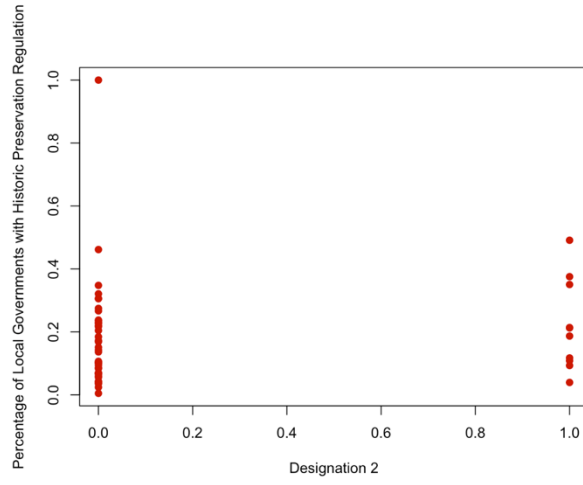
APPENDIX I: THE PERCENTAGE OF ADOPTION OF
HISTORIC DISTRICTS AND STATE REGULATORY
PROCESS

State regulatory processes were classified as restrictive or permissive for three designation provisions and three regulation provisions according to the criteria described in Subsections II.A.1 and II.A.2. States classified as permissive were assigned 0, and states classified as restrictive were assigned 1. Graphs A through F depict the restrictiveness of states' regulatory processes (x) for each of the six enabling provisions, along with each states' percentage of local governments adopting historic preservation regulations (y). Additionally, Graph G depicts the overall restrictiveness of states' regulatory processes on a composite scale of 1 to 6 (x) with each states' percentage of local governments adopting historic preservation regulations (y).

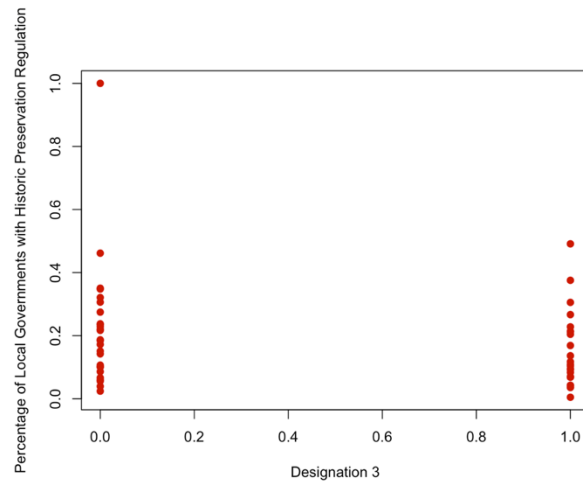
Graph A. Designation 1



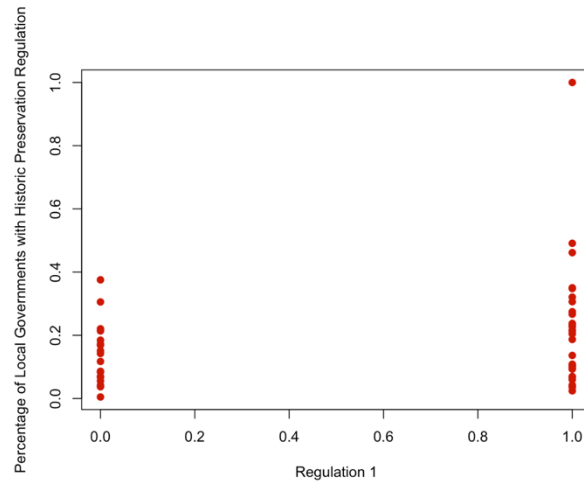
Graph B. Designation 2



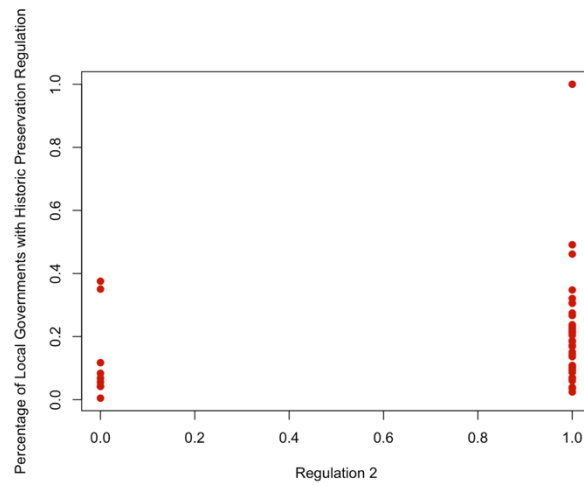
Graph C. Designation 3



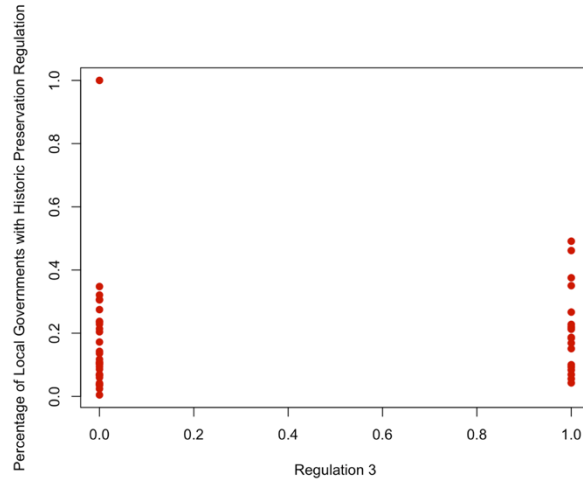
Graph D. Regulation 1



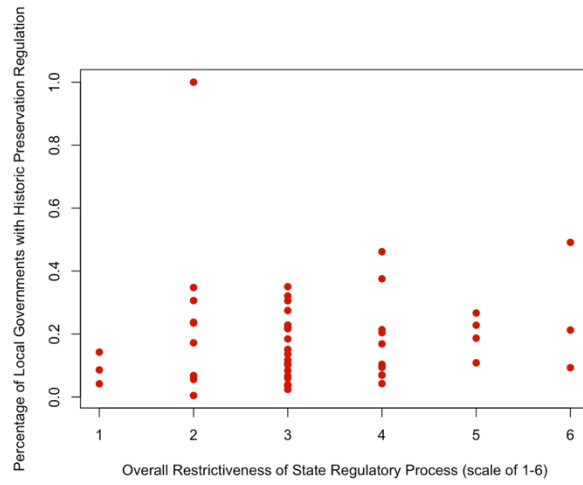
Graph E. Regulation 2



Graph F. Regulation 3

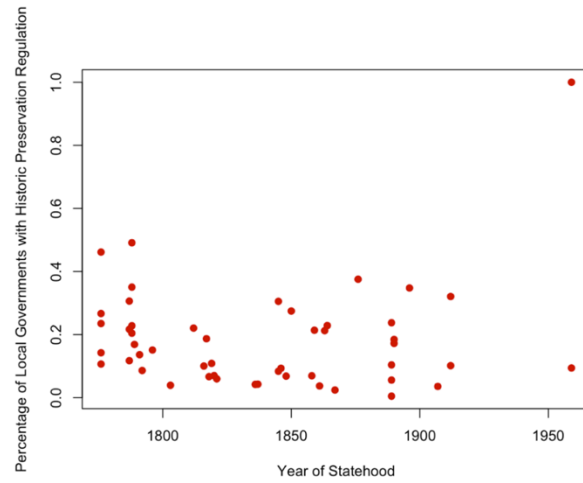


Graph G. Overall Restrictiveness of State Regulatory Process (scale of 1–6)

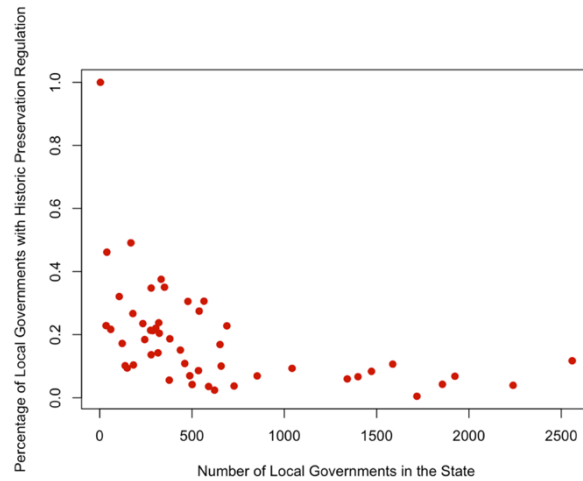


APPENDIX II: THE PERCENTAGE OF ADOPTION OF HISTORIC DISTRICTS AND DEMOGRAPHIC, PROPERTY, AND POLITICAL VARIABLES

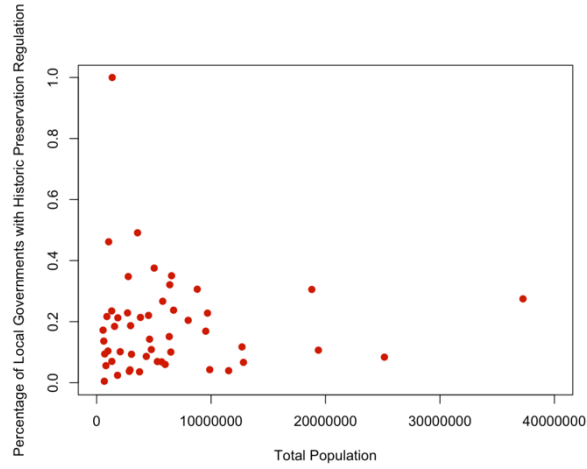
Graph A. Year of Statehood (x) vs. Percentage of Local Governments with Historic Preservation Regulation (y)



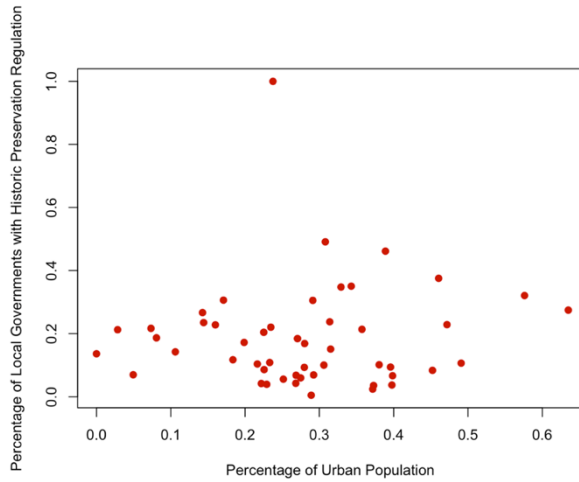
Graph B. Number of Local Governments in the State (x) vs. Percentage of Local Governments with Historic Preservation Regulation (y)



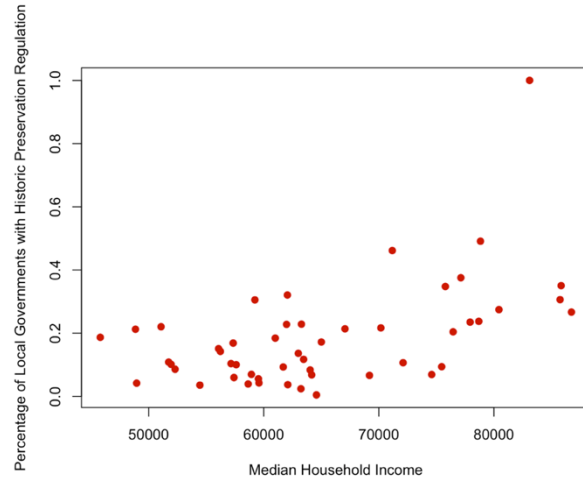
Graph C. Total Population (x) vs. Percentage of Local Governments with Historic Preservation Regulation (y)



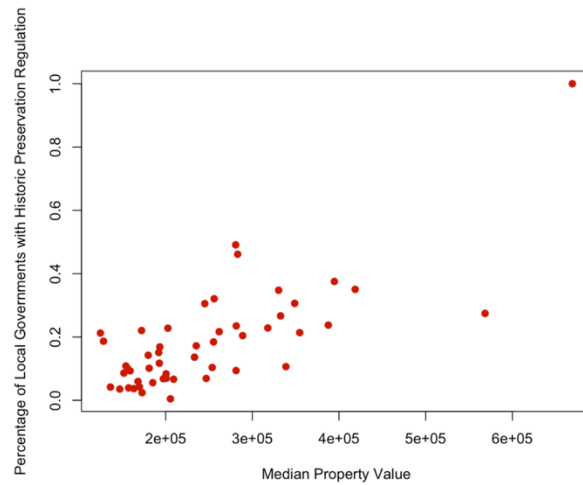
Graph D. Percentage of Urban Population (x) vs. Percentage of Local Governments with Historic Preservation Regulation (y)



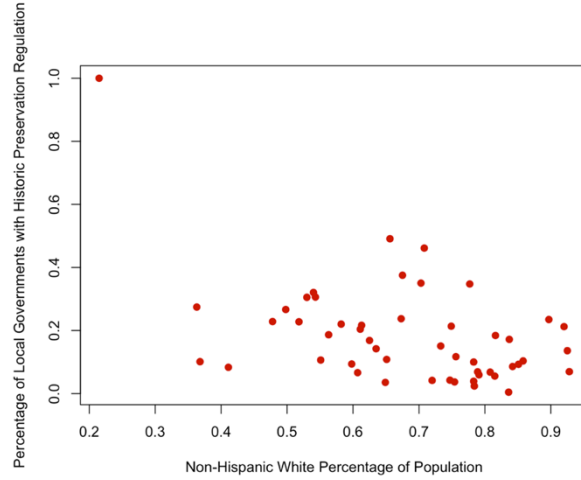
Graph E. Median Household Income (x) vs. Percentage of Local Governments with Historic Preservation Regulation (y)



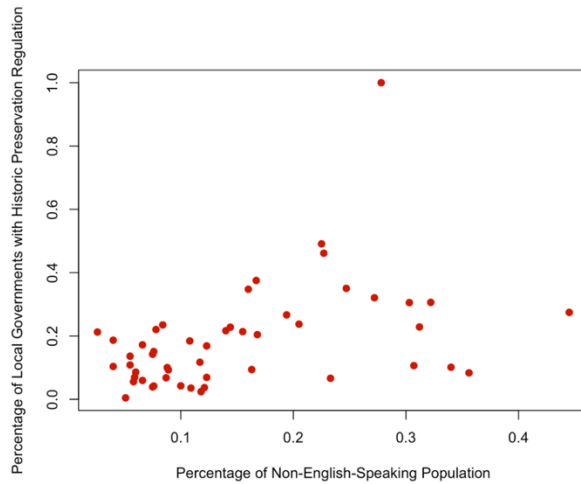
Graph F. Median Property Value (x) vs. Percentage of Local Governments with Historic Preservation Regulation (y)



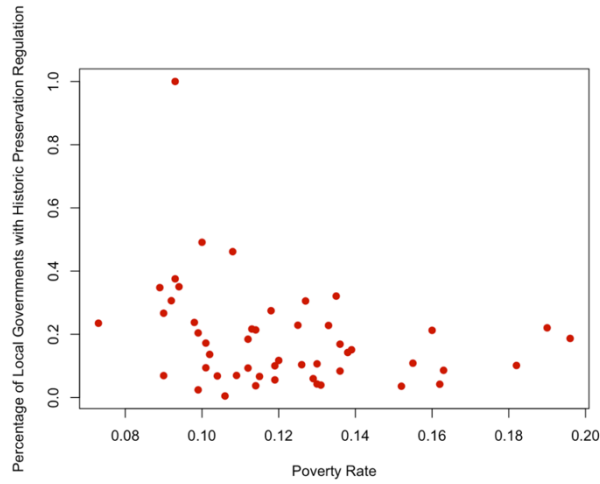
Graph G. Non-Hispanic White Percentage of Population (x) vs. Percentage of Local Governments with Historic Preservation Regulation (y)



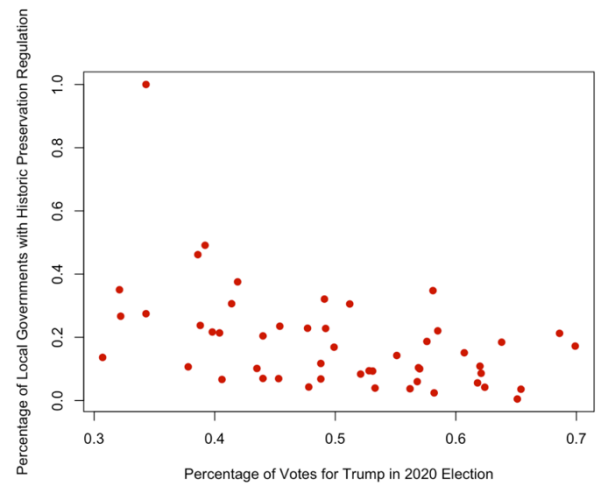
Graph H. Percentage of Non-English-Speaking Population (x) vs. Percentage of Local Governments with Historic Preservation Regulation (y)



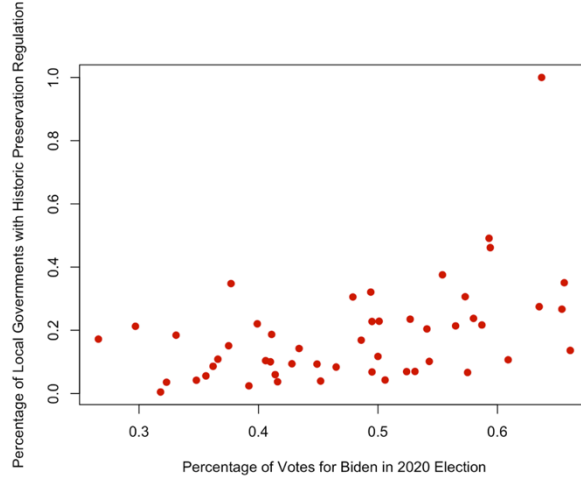
Graph I. Poverty Rate (x) vs. Percentage of Local Governments with Historic Preservation Regulation (y)



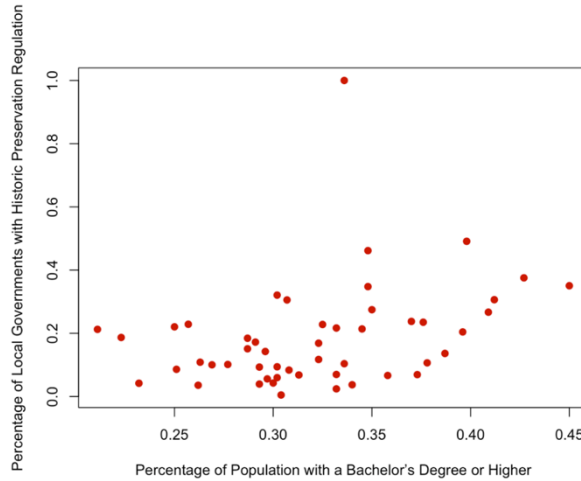
Graph J. Percentage of Votes for Trump in 2020 Election (x) vs. Percentage of Local Governments with Historic Preservation Regulation (y)



Graph K. Percentage of Votes for Biden in 2020 Election (x) vs. Percentage of Local Governments with Historic Preservation Regulation (y)



Graph L. Percentage of Population with a Bachelor's Degree or Higher (x) vs. Percentage of Local Governments with Historic Preservation Regulation (y)



Graph M. Percentage of Population with an Associate's Degree (x) vs. Percentage of Local Governments with Historic Preservation Regulation (y)

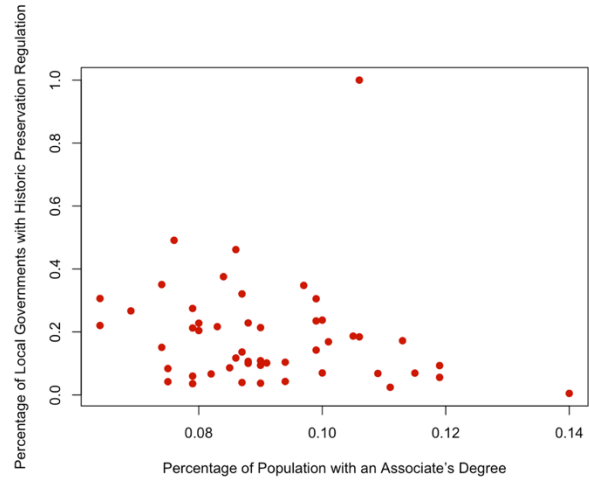


Table 1. Correlations Between Selected Variables and the Percentage of Local Governments with Historic Preservation Regulation, Excluding Hawaii from the Dataset

Variable	Correlation (<i>r</i>)	<i>p</i> -value ²⁰⁰
Year of Statehood	<i>r</i> = -0.208	<i>p</i> -value = 0.152
Number of Local Governments in the State	<i>r</i> = -0.514	<i>p</i>-value < 0.001
Total Population	<i>r</i> = 0.059	<i>p</i> -value = 0.687
Percentage of Urban Population	<i>r</i> = 0.130	<i>p</i> -value = 0.372
Median Household Income	<i>r</i> = 0.517	<i>p</i>-value < 0.001
Median Property Value	<i>r</i> = 0.605	<i>p</i>-value < 0.001
Non-Hispanic White Percentage of Population	<i>r</i> = -0.288	<i>p</i>-value = 0.045
Percentage of Non-English-Speaking Population	<i>r</i> = 0.440	<i>p</i>-value = 0.002
Poverty Rate	<i>r</i> = -0.259	<i>p</i> -value = 0.073
Percentage of Votes for Trump in 2020 Election	<i>r</i> = -0.447	<i>p</i>-value = 0.001
Percentage of Votes for Biden in 2020 Election	<i>r</i> = 0.448	<i>p</i>-value = 0.001
Percentage of Population with a Bachelor's Degree or Higher	<i>r</i> = 0.442	<i>p</i>-value = 0.001
Percentage of Population with an Associate's Degree	<i>r</i> = -0.361	<i>p</i>-value = 0.011

200. Statistically significant *p*-values that are less than 0.05 are denoted in bold.

Table 2. Correlations Between Eight Statistically Significant Demographic, Property, and Political Variables and Median Property Value

Variable	Correlation (r)	p -value ²⁰¹
Number of Local Governments in the State	$r = -0.306$	p-value = 0.030
Median Household Income	$r = 0.790$	p-value < 0.001
Non-Hispanic White Percentage of Population	$r = -0.497$	p-value < 0.001
Percentage of Non-English-Speaking Population	$r = 0.626$	p-value < 0.001
Poverty Rate	$r = -0.528$	p-value < 0.001
Percentage of Votes for Trump in 2020 Election	$r = -0.652$	p-value < 0.001
Percentage of Votes for Biden in 2020 Election	$r = 0.631$	p-value < 0.001
Percentage of Population with a Bachelor's Degree or Higher	$r = 0.589$	p-value < 0.001

201. Statistically significant p -values that are less than 0.05 are denoted in bold.