

UC Irvine

UC Irvine Law Review

Title

Climate Last Resorts

Permalink

<https://escholarship.org/uc/item/7fr855ng>

Journal

UC Irvine Law Review , 16(1)

ISSN

2327-4514

Author

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Publication Date

2026-02-07

Climate Last Resorts

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The United States faces a climate crisis, an affordable housing crisis, and, linking them both, an insurance crisis. At the intersection of these concurrent predicaments lie a set of little-known but surprisingly impactful policies: state Insurer of Last Resort (ILR) programs. ILRs are state policies that provide property insurance when private insurance is unavailable, such as when private insurers determine that climate hazards are too risky to underwrite.

This Article argues that long-overlooked ILR programs are quickly becoming lynchpins for addressing some of today's most pressing concerns around climate, housing, and insurance. Accordingly, ILRs bear urgent attention and reevaluation. In short, ILR programs are likely the most important policies that you've never heard of.

Building on this observation, the Article makes three main contributions. First, it identifies the power of ILR programs as intersectional policy responses to the concurrent insurance, climate, and housing crises.

Second, it surveys existing ILR policies, finding that they are relics of sixty-year-old decisions, and that states have seemingly overlooked the opportunities ILRs provide for tailored responses to insurance, climate, and housing concerns.

Third, it analyzes insurance data and state climate policy trends to show that many legacy ILR programs appear out of step with insurance withdrawal threats and state climate policy preferences. This suggests that states should consider revising their ILR programs in the near future.

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INTRODUCTION

We are in crisis, and not just one. The United States faces a climate crisis, an affordable housing crisis, and, linking them both, an insurance crisis. All loom at the same time, and each stokes the next.

At the intersection of these concurrent predicaments lie a set of little-known but surprisingly impactful policies: state Insurer of Last Resort (ILR) programs. ILRs are state policies that provide property insurance when private insurance is unavailable, such as when private insurers determine that climate hazards are too risky to underwrite. This Article argues that long-overlooked ILR programs are quickly becoming lynchpins for addressing some of today's most pressing concerns around climate, housing, and insurance. Accordingly, ILRs bear urgent attention and reevaluation. In short, ILR programs are likely the most important policies that you've never heard of.

To illustrate why, and to appreciate the intersecting climate, housing, and insurance crises, consider the situation of Lorri Williams, who lives in Silver City, New Mexico.¹ The housing affordability crisis has hit Silver City. The town's housing assessment and strategic plan, which was adopted "to create affordable housing opportunities,"² reports that "affordability is a major problem in the town, as over 3 in 10 households are burdened by the cost of housing."³ Further, Silver City's "[h]ousing prices have risen much faster than incomes, meaning each passing year housing becomes more and more unaffordable."⁴ Ms. Williams could manage to afford a manufactured home just outside Silver City.

The climate crisis has also struck Silver City. The town is surrounded by forest and has become a "firetrap" due to the higher temperatures and drier conditions caused by climate change.⁵ Now, wildfires threaten to burn at any time of year.⁶ Fire risks that used to be confined to late spring and summer are now ever present.⁷ Moreover, manufactured homes, mobile homes, and other less expensive housing are more vulnerable to fire than are traditionally constructed houses.⁸ Climate change had amplified Ms. Williams's exposure to a serious hazard.

As a result, the insurance crisis has visited Silver City as well. Ms. Williams was dropped by her former insurer, who declined to renew her property insurance policy due to concerns over climate-exacerbated wildfires.⁹ The denial of insurance stated that because of increased fire vulnerability, Ms. Williams's home was now "located inside of or in close proximity of an area that is identified as having a high risk of wildfire."¹⁰

This left Ms. Williams without any available private insurance. Her one option for insurance: New Mexico's ILR program.

1. Christopher Flavelle, *Insurers Are Deserting Homeowners as Climate Shocks Worsen*, N.Y. TIMES (Dec. 18, 2024), <https://www.nytimes.com/interactive/2024/12/18/climate/insurance-non-renewal-climate-crisis.html> [perma.cc/XLT4-DK4Z].

2. *Housing Analysis & Strategic Plan, Town of Silver City*, <https://www.silvercitymuseum.org/182/Housing-Analysis-Strategic-Plan> [perma.cc/P77G-WQGM] (last visited Jan. 24, 2025).

3. MEDIUS INC., SILVER CITY HOUSING: ANALYSIS AND STRATEGIC PLAN 27 (Bare Boot Consulting, LLC ed., 2010), <https://www.silvercitymuseum.org/DocumentCenter/View/163/Silver-City-Housing-Analysis-and-Strategic-Plan-PDF> [web.archive.org/web/20230206154402/https://www.silvercitymuseum.org/DocumentCenter/View/163/Silver-City-Housing-Analysis-and-Strategic-Plan-PDF].

4. *Id.*

5. Flavelle, *supra* note 1.

6. *Id.*

7. *Id.*

8. *Id.*

9. *Id.*

10. *Id.*

Ms. Williams's experience illustrates how ILR programs have suddenly become critical. New Mexico's ILR program fundamentally impacts how Ms. Williams can navigate the insurance crisis, the housing crisis, and the climate crisis. It dictates her ability to retain insurance, and thus it influences her housing affordability, her overall financial stability, and her options for staying in place or moving in light of climate-exacerbated fire risk.

Moreover, Ms. Williams's story is hardly unique. It could describe countless property owners, or would-be owners, who live in areas facing affordability concerns, increased climate risk, and new insurance woes. In fact, so many of those impacted by the tragic Los Angeles wildfires either are or soon will be in similar situations.

Indeed, this is a national problem. ILRs are suddenly so significant because climate change, insurance, and housing are overlapping concerns across the country.

The national emergency of climate change and its links to insurance availability are well-documented. Regularly, front-page headlines in major newspapers highlight the gravity and immediacy of these issues. "How the Climate Crisis Became an Insurance Crisis"¹¹ is broadly representative, but it is scarcely alone. Similar stories abound:

- "Insurers are Deserting Homeowners as Climate Shocks Worsen";¹²
- "As Insurers Around the US Bleed Cash from Climate Shocks, Homeowners Lose";¹³
- "Climate Shocks Are Making Parts of America Uninsurable. It Just Got Worse";¹⁴
- "Hurricanes Amplify Insurance Crisis in Riskiest Areas."¹⁵

The upshot is that climate change is causing "insurance withdrawal" across the country. In response to climate amplified storms, fires, floods, and droughts, private insurers are raising prices, limiting coverage, or altogether ceasing to write policies in risky areas. Once again, a litany of headlines conveys the gist and its urgency:

- "California's Home Insurance Crisis: What Went Wrong, How it Can Be Fixed and What Owners Can Do";¹⁶

11. Christopher Flavelle, *How the Climate Crisis Became an Insurance Crisis*, N.Y. TIMES (Dec. 19, 2024), <https://www.nytimes.com/2024/12/19/climate/how-the-climate-crisis-became-an-insurance-crisis.html?smid=em-share> [perma.cc/AD3X-S5BZ].

12. Flavelle, *supra* note 1.

13. Christopher Flavelle, *As Insurers Around the US Bleed Cash from Climate Shocks, Homeowners Lose*, N.Y. TIMES (May 13, 2024), https://www.nytimes.com/interactive/2024/05/13/climate/insurance-homes-climatechangeweather.html?unlocked_article_code=1.r00.IL7s.axgVkcFh9Rx&smid=url-share [perma.cc/XGX2-GRHY].

14. Christopher Flavelle, Jill Cowan & Ivan Penn, *Climate Shocks Are Making Parts of America Uninsurable. It Just Got Worse*, N.Y. TIMES (May 31, 2023), <https://www.nytimes.com/2023/05/31/climate/climate-change-insurance-wildfires-california.html?smid=em-share> [perma.cc/75HP-S4RT].

15. Emily Flitter, *Hurricanes Amplify Insurance Crisis in Riskiest Areas*, N.Y. TIMES (Oct. 12, 2024), <https://www.nytimes.com/2024/10/12/business/insurance-hurricane-milton-helene.html?ogp=dpl&smid=em-share> [perma.cc/UCL5-84UZ].

16. Laurence Darmiento, *California's Home Insurance Crisis: What Went Wrong, How It Can Be Fixed and What Owners Can Do*, L.A. TIMES (Mar. 29, 2024), <https://www.latimes.com/business>

- “Farmers Insurance is Leaving Florida in Latest Blow to Homeowners”;¹⁷
- “Insurer’s Retreat in Florida Signals Crisis with No Easy Fix”;¹⁸
- “Hawaii Wildfires Spur Insurers to Reassess the State’s Risk”;¹⁹
- “See Where Home Insurance Policies Were Dropped in Your State.”²⁰

Finally, the intersection between the “climate crisis” and the “insurance crisis” is exacerbating another national “crisis”—housing affordability. One more parade of headlines tells the tale:

- “‘Not Sustainable’: High Insurance Costs Threaten Affordable Housing”;²¹
- “Soaring Insurance Costs Could ‘End’ Affordable Housing, Developers Warn”;²²
- “Habitat for Humanity Helped Them Get Homes. An Insurance Crisis May Take Them Away”;²³
- “How Climate Disasters Are Making Mobile Homes a Huge Risk”;²⁴
- “If Hurricane Rebuilding Is Affordable Only for the Wealthy, This Is the Florida You Get.”²⁵

/story/2024-03-29/californias-insurance-crisis-what-went-wrong-whats-being-done-to-fix-it-and-how-homeowners-can-helpthemselves#:~:text=The%20companies%20are%20blaming%20wildfires,is%20this%20pullback%20affecting%20homeowners? [perma.cc/MEV9-2BWW].

17. Alex Harris & Lawrence Mower, *Farmers Insurance Is leaving Florida in Latest Blow to Homeowners*, TAMPA BAY TIMES (July 11, 2023), <https://www.tampabay.com/news/business/2023/07/11/farmers-insurance-florida-leaving-hurricanes-insolvent/> [perma.cc/983Y-BDHY].

18. Emily Flitter, *Insurer’s Retreat in Florida Signals Crisis With No Easy Fix*, N.Y. TIMES (July 14, 2023), <https://www.nytimes.com/2023/07/14/business/farmers-homeowners-insurance-florida.html> [perma.cc/7WCW-EC6N].

19. Santul Nerkar & Emily Flitter, *Hawaii Wildfires Spur Insurers to Reassess the State’s Risk*, N.Y. TIMES (Aug. 25, 2023), <https://www.nytimes.com/2023/08/25/business/hawaii-fires-insurance.html?smid=em-share> [perma.cc/R5Y9-CRR5].

20. Mira Rojanasakul & Christopher Flavelle, *See Where Home Insurance Policies Were Dropped in Your State*, N.Y. TIMES (Dec. 18, 2024), <https://www.nytimes.com/interactive/2024/12/18/climate/insurance-nonrenewal-rates-policies-state-map.html?smid=em-share> [perma.cc/ZM9T-QLVT].

21. David W. Chen, *‘Not Sustainable’: High Insurance Costs Threaten Affordable Housing*, N.Y. TIMES (June 10, 2024), <https://www.nytimes.com/2024/06/07/us/home-insurance-homeless-affordable.html?smid=em-share> [perma.cc/D6C8-MYP2].

22. Emily Flitter, *Soaring Insurance Costs Could ‘End’ Affordable Housing, Developers Warn*, N.Y. TIMES (Aug. 5, 2024), <https://www.nytimes.com/2024/08/25/business/home-insurance-costs-affordable-housing.html> [perma.cc/DJG7-ZDKR].

23. Rick Rojas, *Habitat for Humanity Helped Them Get Homes. An Insurance Crisis May Take Them Away*, N.Y. TIMES (Aug. 9, 2024), <https://www.nytimes.com/2024/08/09/us/new-orleans-habitat-for-humanity-insurance.html?smid=em-share> [perma.cc/8K7L-EQDZ].

24. Hilary Howard & Christopher Flavelle, *How Climate Disasters Are Making Mobile Homes a Huge Risk*, N.Y. TIMES (Oct. 14, 2024), <https://www.nytimes.com/2024/10/14/climate/mobile-homes-hurricanes.html?ogrp=dpl&smid=em-share> [perma.cc/48KU-QF8L].

25. Sarah Stodola, *If Hurricane Rebuilding Is Affordable Only for the Wealthy, This Is the Florida You Get*, N.Y. TIMES (Sept. 27, 2023), <https://www.nytimes.com/2023/09/27/opinion/hurricane-recovery-florida.html?smid=em-share> [perma.cc/KS3H-C6WL] (“[U]pscaling [that is, higher priced redevelopment] is also a consequence of confronting climate change, especially in the aftermath of a devastating storm. . . . Stringent building codes and dysfunction in the insurance industry have

This news attention makes clear the significant, high-stakes links between climate, insurance, and housing. This is an extraordinary collision of social policy concerns. And at their crossing lie ILR programs. ILRs now directly influence millions of people. They impact insurance availability, housing affordability, and climate change reactions nationwide. As a result, these programs, which have been effectively ignored since the 1960s, now represent a primary state response to insurance withdrawals, and they have massive practical implications for climate change adaptation and housing access. For all these reasons, ILR policies command present attention and reconsideration.

Accordingly, this Article analyzes ILR programs and their prominence at the confluence of climate, insurance, and housing. In doing so, it contributes to a vanguard of legal scholarship. To this point, only a few legal scholars have approached the interface of climate and insurance,²⁶ and research reveals no legal scholarship at all regarding ILR programs. Thus, this Article breaks new ground and contributes a foundational analysis at the crossroads of climate, insurance, and housing.

In particular, the Article makes three main contributions. First, it identifies the power of ILR programs as intersectional policy responses to the concurrent insurance, climate, and housing crises. Second, it surveys existing ILR policies, finding that they are relics of sixty-year-old decisions, and that states have seemingly overlooked the opportunities ILRs provide for tailored responses to insurance, climate, and housing concerns. Third, it analyzes insurance data and state climate policy trends to show that many legacy ILR programs appear out of step with insurance withdrawal threats and state climate policy preferences. This suggests that states should consider revising their ILR programs in the near future.

These contributions unfold in the Article's three Parts.

Part I dives into the dynamics between climate change, insurance withdrawal, and housing affordability. It pinpoints the role of ILR programs at this convergence of emergencies, showing that ILRs can impact more private parties more acutely than nearly any other policy targeting these issues. Accordingly, it then argues that ILR programs represent not only major responses to insurance withdrawal, but also states' most impactful policies regarding climate adaptation and important contributors to housing affordability.

Part II then surveys state ILR policies in detail. It finds that thirty-three states currently provide for ILR coverage, and seventeen states do not. Of the thirty-three states that adopted ILRs, most use standardized "FAIR plans" that are vestiges of 1960s policies with little relation to the current insurance crisis, climate crisis, or housing crisis. However, among existing ILR programs there are a few potentially important variations that show differing approaches to hazard risk and affordability concerns. As for the seventeen states with no current ILR offering, Part II also reviews insurance data that indicates further insurance withdrawal may be imminent,

driven the cost of rebuilding beyond the reach of many current property owners, including small-scale developers.").

26. See Daniel Schwarcz, *Obamacare for Homeowners Insurance: Fixing America's Broken Insurance Markets in a Time of Climate Change*, 49 HARV. ENV'T'L L. REV. 525 (2025); Mark Nevitt & Michael Pappas, *Climate Risk, Insurance Retreat, and State Response*, 58 GA. L. REV. 1603 (2024); Albert C. Lin, *Public Insurance as a Lever for Semi-Managed Climate Retreat*, 58 GA. L. REV. 1535 (2024).

particularly in some states without ILR programs. This suggests that states without current ILR programs will face increasing pressure to adopt them in the coming years.

Next, Part III examines how current ILR programs align with states' more obvious climate change policies. It compares state ILR programs with states' other climate adaptation policies and their emission reduction policies. From this, it finds that while nearly every state shows a clear and consistent policy preference across their obvious climate policies, state ILR programs do not align with states' climate policy commitments. For instance, whether an ILR encourages or discourages climate adaptation does not correspond with whether a state has an otherwise proactive or inactive climate policy. Given the considerable impacts that ILRs have on climate adaptation, their disconnect from states' other climate policies suggests further that states might be poised to reconsider their ILR programs.

Taken together, Parts I–III suggest that ILR programs have immediate significance and that a variety of factors may push states to revisit their ILR policies in the near future—whether to adopt ILRs in the first instance, to update existing ILR programs in light of current concerns, or to recalibrate ILR programs to comport with other climate policy choices.

I. THE IMPORTANCE OF ILRS AT THE CONFLUENCE OF CLIMATE CHANGE, INSURANCE, AND AFFORDABLE HOUSING

This Part establishes the importance of ILR programs by explaining how they sit at the confluence of climate change, insurance, and affordable housing concerns. To do so, it traces the interlaced links between these topics.

It starts by explaining how climate impacts have led to both climate adaptation efforts and insurance withdrawals. As mentioned in the Introduction, climate change has exacerbated floods, fires, storms, and droughts. As a result, these climate hazards impact more and more people more and more severely. These impacts form the heart of the climate crisis, and they have triggered a series of responses.

To begin, as described in Section A, individuals and government actors have reacted to climate change by turning to “climate adaptation” measures to reduce or avoid climate harms. However, these climate adaptation efforts—which represent major climate policy initiatives—have had limited uptake and effectiveness.

At the same time, as Section B explains, the climate crisis has bred an insurance crisis. Climate-amplified hazards have destabilized insurance business models. In response, insurers have raised prices or halted coverage. This insurance reaction to climate change constitutes the “insurance withdrawal” at the core of the insurance crisis.

Insurance withdrawal, in turn, has aggravated the affordable housing crisis, while also influencing climate response. Section C describes how insurance withdrawals have increased costs for individual property owners. It shows that, in some cases, insurance withdrawal has incentivized more individual climate adaptation efforts. However, it also documents how insurance withdrawal has distressed housing affordability and introduced additional economic instability.

The impacts of insurance withdrawal on affordability have drawn ILRs to the forefront of state insurance policy. As covered in Section D, states have responded to insurance withdrawal in two primary ways: (1) attempting to halt private insurance withdrawal by offering insurers regulatory concessions, and (2) providing

ILRs as alternatives to private insurance markets. The latter response, ILR programs, has proven especially significant as droves of property owners have enrolled in ILRs, which represent their only affordable or available insurance option.

Against this backdrop and in light of ILRs' swelling impact on so many individuals, Section E argues that ILRs serve as de facto climate adaptation and housing affordability policies. In fact, this Section maintains that because ILRs influence individual behavior so greatly, these programs represent the most important climate adaptation policies in the United States. For similar reasons, ILRs also significantly influence housing affordability. Thus, with their crosscutting effects on insurance availability, climate adaptation, and housing affordability, ILRs emerge as impactful policies across a trio of urgent social issues.

With these linkages in mind, we examine their dynamics more closely, beginning with climate change impacts and adaptation responses.

A. Climate Change Harms and Climate Adaptation Efforts

In response to climate harms, individuals and government actors have undertaken climate adaptation efforts. This Section explains the concept of climate adaptation, then it looks at individual adaptation measures. After that, it examines targeted climate adaptation policies at the local, state, and federal level. Ultimately, it concludes that while individual efforts and targeted government policies have made some advances toward adaptation, their progress has been limited and uneven.

This information on climate adaptation serves as background for later discussion of ILRs in Sections C, D, and E. These Sections examine how insurance withdrawal influences individual adaptation efforts. Further, they compare the effects of ILR programs to the effects of targeted government adaptation policies.

1. What is Climate Adaptation?

As typically understood, climate adaptation describes efforts to “prepare for or adjust to the impacts of climate change.”²⁷ Professors J.B. Ruhl and Robin Craig have helpfully summarized common adaptation measures in a “three Rs” framework of “resistance,” “resilience,” and “retreat.”²⁸ “Resistance” describes efforts to block out climate change impacts through protection, fortification, or defense, such as by building sea walls in the face of rising seas.²⁹ “Resilience” approaches try to reduce vulnerability to climate change by adjusting to accommodate climate impacts.³⁰ Examples of “resilience” measures might include

27. See Michael Pappas, *The Structure of U.S. Climate Policy*, 83 MD. L. REV. 347, 365 (2024).

28. See J.B. Ruhl & Robin Kundis Craig, 4°C, 106 MINN. L. REV. 191, 200–201 (2021). The “three Rs” of are not mutually exclusive; they may be deployed independently or in conjunction. Further, the “three Rs” are not necessarily novel tactics nor responses unique to climate change. In particular, “resistance has long been a core policy approach to natural hazards in the United States.” The construction of seawalls, dams, and levees, for example, long predate any climate change concern. Resilience measures, too, have some legacy dating back further than climate change concerns. So, it is not necessarily the nature of these approaches that makes them climate change adaptation measures. Rather, it is their deployment in response to exacerbated climate risks. The “three Rs” are the means; climate adaptation is the end. See generally *id.* at 232–39.

29. *Id.* at 232.

30. *Id.*

changing building designs or materials to be more flood or fire resistant, or installing air conditioners to deal with increased temperatures.³¹ Finally, “retreat” approaches “focus on intentionally abandoning areas subject to harms and relocating the people and structures to less vulnerable locations.”³²

Climate adaptation, and its use of “three Rs” approaches, is a practical endeavor, seeking to reduce injury, destruction, and suffering from the impacts of climate change. Accordingly, we now turn to the practical implementation of adaptation measures.

2. Individual Climate Adaptation

Individuals can, and do, pursue climate adaptation measures on their own. For example, a coastal homeowner may make the individual choice to build her own seawall for protection against climate exacerbated flooding. Or that individual might pursue resilience by raising the elevation of her home so that floodwaters can wash under the house without damaging it. Or, the individual might retreat, selling her coastal property and moving inland.

Some individuals have, in fact, proactively adopted similar climate adaptation measures. Indeed, this may just sound like rational behavior. Whether or not a person recognizes it as “climate adaptation,” there are self-interested incentives for people to minimize the risks they face from worsening floods, fires, storms, or droughts. To take one example, in areas of St. Petersburg, Florida, that have repeatedly flooded, reports indicate that some residents have proactively chosen to move away to avoid the risk, while others who remain have elevated their homes for flood resilience.³³ Additionally, real estate data suggest that retirees across the country are taking climate risk into account in making decisions on where to live.³⁴ There are also numerous news pieces about how repeated, intense disaster experiences have driven some people to retreat from climate hazards.³⁵

However, such instances of individual climate adaptation seem to represent more exceptional, even newsworthy, events. The broader picture indicates that there are significant limits to the adoption and effectiveness of individual climate adaptation measures. For instance, extensive evidence suggests that individual

31. *Id.* at 234–35.

32. *Id.* at 236.

33. Patricia Mazzei, *Their Florida ‘Paradise’ Keeps Flooding, but Some Can’t Afford a Solution*, N.Y. TIMES (June 5, 2024), <https://www.nytimes.com/2024/06/05/us/florida-flooding-st-petersburg.html?smid=em-share> [perma.cc/4G7B-Z34F].

34. Susan B. Garland, *‘Do You Really Want to Rebuild at 80?’ Rethinking Where to Retire*, N.Y. TIMES (Nov. 18, 2022), <https://www.nytimes.com/2022/11/18/business/where-to-retire-climate-change.html?smid=em-share> [perma.cc/8EUX-KYFE].

35. See generally Abrahm Lustgarten, *The People Fleeing Climate Disasters Are Going to Transform the American South*, N.Y. TIMES (Oct. 22, 2024), <https://www.nytimes.com/2024/10/02/opinion/hurricane-helene-florida-insurance.html?smid=em-share> [perma.cc/EA49-J4VD]; J. David Goodman, *‘This Storm Has Broken People’: After Beryl, Some Consider Leaving*, N.Y. TIMES (July 16, 2024), <https://www.nytimes.com/2024/07/16/us/houston-exodus-climate-hurricane-beryl.html?smid=em-share> [perma.cc/6447-4W2J] (describing individual decisions to leave vulnerable parts of Houston); Isabelle Taft, Elisabeth Parker, Valerie Boey Ramsey & Patricia Mazzei, *As Florida Storms Worsen, Some in Tampa Bay Wonder: Is Living There Worth It?*, N.Y. TIMES (Sept. 28, 2024), <https://www.nytimes.com/2024/09/28/us/hurricane-helene-tampa-bay-florida-worries.html> [perma.cc/2FNY-FZT7].

adaptation choices have not kept pace with climate-exacerbated risks.³⁶ Financial distortions (like subsidized development), lack of information, and even misinformation have muted individual incentives for adaptation.³⁷ Further, private choices about where to live and how to build have, on balance, amplified climate risks as people continue to move into more vulnerable areas.³⁸

Further, as climate change has heightened risks in areas that historically had not experienced appreciable storm, flood, fire, or drought vulnerability, some longer-time residents simply cannot afford to invest in individual resistance, resilience, or retreat measures.³⁹ The example of St. Petersburg, Florida, cited above, once again proves instructive. As repeated flooding recently became a concern, some residents could afford to move away or to elevate their homes.⁴⁰ But other less-wealthy residents were stuck, unable to afford adaptation measures and at the mercy of future flooding.⁴¹ Similarly, in the case of fire risk, “[p]roperly protecting an existing home can be expensive, costing up to \$27,000,”⁴² which is beyond what many homeowners can undertake.

Thus, on the whole, while there are instances of individual climate adaptation actions, the ultimate impact of individual climate adaptation measures appears to have been limited.

3. Climate Adaptation Policies

Climate adaptation is not solely a function of individual action. Indeed, every jurisdiction in the United States effectively has a climate adaptation policy. Some are simply default policies resulting from inaction, but others are proactive. As elaborated below, the majority of jurisdictions in the United States have default adaptation policies because, by not adopting affirmative approaches for adaptation,

36. See Michael Pappas & Victor B. Flatt, *Climate Changes Property: Disasters, Deconstruction, and Retreat*, 82 OHIO ST. L.J. 331, 378 (2021). See also David Gelles, *Climate Disasters Daily? Welcome to the ‘New Normal,’* N.Y. TIMES (July 10, 2023), <https://www.nytimes.com/2023/07/10/climate/climate-change-extreme-weather.html?smid=em-share> [perma.cc/X4Z4-W6QG] (suggesting that extreme climate events are losing their shock value); Lydia DePillis, *Mortgage Regulators Are Struggling Off Climate Risk. It Could Cost Taxpayers Billions*, N.Y. TIMES (Dec. 7, 2024), <https://www.nytimes.com/2024/12/07/business/economy/mortgages-climate-risk-fannie-freddie.html?smid=em-share> [perma.cc/M2J4-WJBD] (describing how mortgage prices have not incorporated climate risk).

37. See Pappas & Flatt, *supra* note 36; Nevitt & Pappas, *supra* note 26, at 1630.

38. See Mira Rojanasakul & Nadja Popovich, *Where Americans Have Been Moving Into Disaster-Prone Areas*, N.Y. TIMES (Sept. 30, 2024), <https://www.nytimes.com/interactive/2024/09/30/climate/americans-moving-hurricane-wildfire-risk.html?smid=em-share> [perma.cc/98S8-2Z7L]; Nadja Popovich & Brad Plumer, *As Wildfires Grow, Millions of Homes Are Being Built in Harm’s Way*, N.Y. TIMES (Sept. 9, 2022), <https://www.nytimes.com/interactive/2022/09/09/climate/growing-wildfire-risk-homes.html> [perma.cc/56MY-6LM7].

39. See, e.g., Mazzei, *supra* note 33 (describing individuals who are unable to afford climate adaptation measures).

40. *Id.*

41. *Id.*

42. Popovich & Plumer, *supra* note 38. See also Gregory Barber, *Flood-Soaked Homeowners Face a Costly Choice: Raise or Raze*, N.Y. TIMES (Dec. 27, 2024), <https://www.nytimes.com/2024/12/27/realestate/home-lifts-flooding-climate-change.html?smid=em-share> [perma.cc/8MEZ-S6WY] (discussing the choice between resilience or retreat).

they leave climate adaptation solely to individual choice.⁴³ However, some jurisdictions have adopted proactive adaptation policies.

As a generic example, a proactive adaptation policy might include a coastal municipality pursuing resistance by publicly building a seawall or by subsidizing private seawalls. Or a municipality could adopt resilience policies, such as instituting resilient building codes to require that new homes be elevated above flood levels. Or, a municipality might pursue retreat policies, such as prohibiting building in flood-prone areas or buying flood-vulnerable properties and dedicating them to open space rather than residential habitation.⁴⁴

Such proactive adaptation policies can be, and to some extent are, pursued at all levels of government—local, state, and federal.

The most concrete proactive adaptation policies tend to manifest at the local level,⁴⁵ where we see policies like “green infrastructure or other armoring to resist climate impacts,” “zoning or building requirements to minimize climate risks,” or “retreat programs to relocate people out of highly vulnerable areas.”⁴⁶

However, the localities with seemingly robust adaptation policies⁴⁷ are the exception rather than the rule.⁴⁸ The majority of localities have no prospective planning for any of the “three Rs” approaches.⁴⁹ This is true even of localities that have suffered disasters, such as wildfires.⁵⁰ Often communities and developers wish to rebuild quickly and without new adaptation restrictions that might slow redevelopment and drive up housing costs.⁵¹ Moreover, even when localities do adopt proactive adaptation policies, such as resilient building codes, they tend to be prospective and thus do not address vulnerable structures that have already been built.⁵²

43. See Pappas, *supra* note 27, at 365.

44. See generally Pappas & Platt, *supra* note 36, at 338–46, 398–406 (discussing retreat policies).

45. See Pappas, *supra* note 27, at 365–74.

46. *Id.* at 373.

47. See, e.g., Michael Kimmelman, *A Climate Change Success Story? Look at Hoboken*, N.Y. TIMES (Nov. 3, 2023), <https://www.nytimes.com/2023/11/03/headway/hoboken-floods.html?smid=em-share> [perma.cc/QPM6-R2UM] (describing the City of Hoboken’s progress in adaptation for both sea level rise and storm flooding); Popovich & Plumer, *supra* note 38 (“In 2019, Austin, Tex., one of the fastest-growing cities in the country, took matters into its own hands, adopting stringent rules for new homes in [wildfire risk zones] that require, for instance, noncombustible screens over attic vents and safe storage of propane tanks.”); Austyn Gaffney, *A Climate Resistant Community Passed Two Hurricane Tests*, N.Y. TIMES (Oct. 15, 2024), <https://www.nytimes.com/2024/10/15/climate/florida-climate-resilience-babcock-ranch.html?ogrp=dpl&smid=em-share> [perma.cc/7MSG-6C2S].

48. See Pappas, *supra* note 27, at 372.

49. *Id.*; see also, Christopher Flavelle, *Record Number of Billion-Dollar Disasters Shows the Limits of America’s Defenses*, N.Y. TIMES (Sept. 12, 2023), <https://www.nytimes.com/2023/09/12/climate/billion-dollar-disasters.html?smid=em-share> [perma.cc/YY2L-2VEE] (“The Biden administration has also tried to persuade state and local governments to impose stricter building codes, which can drastically reduce the damage from flooding, hurricanes, wildfires and other disasters. But stricter codes increase the upfront cost of homes, a powerful disincentive as much of the nation suffers through a housing shortage. Despite the federal government’s efforts, only about one-third of American jurisdictions use the most recent building codes.”).

50. See, e.g., Popovich & Plumer, *supra* note 38.

51. *Id.*

52. *Id.*

Moving now to the state level: twenty-four states have adopted some form of proactive adaptation policy.⁵³ However, of these proactive adaptation policies, most are essentially organizational. They do not necessarily implement resistance, resilience, or retreat. Rather, “the most common measures include creating framework plans that provide vulnerability assessments, appointing leadership teams, and announcing goals and strategies.”⁵⁴ While “some state adaptation policies go further by imposing resilient building standards or providing funding for local adaptive practices,”⁵⁵ on the whole, state adaptation policies tend to be more generalized. Again, this shows that effective climate adaptation policies—that is, policies actually influencing individual behavior and risk exposure—appear to be the exception at the state level. Only about half of the states have affirmative adaptation policies; and of those, few directly modify risk exposure.⁵⁶

Finally, federal adaptation policy, though highly meaningful for federal land and federal agencies,⁵⁷ is relatively hands-off when it comes to adaptation measures that likely impact individual property owners. Most federal adaptation policy (outside of federal lands and agencies) is focused on funding and supporting adaptation policies at the local and state levels.⁵⁸ However, this federal funding has been insufficient to meet many adaptive goals.⁵⁹

Looking holistically across local, state, and federal levels, the takeaway seems to be that, while there are some effective adaptation policies, the broader adaptation policy landscape shows limited impact.⁶⁰ As one assessment puts it, “the United States . . . is nowhere close to ready” for climate-exacerbated risks.⁶¹

53. See Pappas, *supra* note 27, at 370–71. See also Popovich & Plumer, *supra* note 38 (“Most Western states don’t have statewide codes, however, and it is usually up to local governments to enforce their own standards.”).

54. See Pappas, *supra* note 27, at 370–71.

55. *Id.*; see also Jenna Russell, Richard Beaven & Hilary Swift, *Vermont Storm Exposes the Strengths, and Limits, of New Flood Defenses*, N.Y. TIMES (July 12, 2023), <https://www.nytimes.com/2023/07/12/us/vermont-flooding-tropical-storm-irene.html?smid=em-share> [perma.cc/9GPC-2MTX] (noting that Vermont acted “[t]o move more people out of harm’s way, the state increased restrictions on building in flood plains, and began a buyback program that has removed 150 homes from those areas”); Popovich & Plumer, *supra* note 38 (“In 2008, California adopted some of the strictest rules in the country for new homes in high-risk fire areas, requiring developers to use fire-resistant materials and to provide access to water for firefighters. Those rules can make a difference. After the Camp Fire, one analysis found that about 51 percent of the 350 single-family homes in Paradise built to the new codes escaped damage, compared with just 18 percent of the 12,100 homes built before the standards.”).

56. For example, Colorado has a proactive climate adaptation policy but no statewide building code. Popovich & Plumer, *supra* note 38 (“After the Marshall Fire in Boulder in late 2021 destroyed more than 1,000 buildings, lawmakers in Colorado began discussing new statewide codes, though they have yet to adopt any.”).

57. See Pappas, *supra* note 27, at 366–67.

58. *Id.* at 366–69; Christopher Flavelle & Rick Rojas, *Vermont Floods Show Limits of America’s Efforts to Adapt to Climate Change*, N.Y. TIMES (July 11, 2023), <https://www.nytimes.com/2023/07/11/climate/climate-change-floods-preparedness.html?smid=em-share> [perma.cc/LNU8-9PX3].

59. Flavelle & Rojas, *supra* note 58. See also generally Flavelle, *supra* note 49.

60. Regarding shortcomings in adaptation efforts, see generally Flavelle & Rojas, *supra* note 58; Flavelle, *supra* note 49; Russell et al., *supra* note 55.

61. Flavelle & Rojas, *supra* note 58.

B. Climate Change Harms and Private Insurance Withdrawal

As climate change harms have spurred some individuals and government entities to pursue adaptation, they have also pushed private insurers to retrench. In fact, the climate crisis has triggered an insurance crisis. Private insurers are withdrawing—that is, raising prices, limiting offerings, or ceasing to write policies entirely—from areas they see as bearing excessive climate change-driven risk. In some cases, this means insurers leaving states altogether. To understand why, we explain the basics of how insurers operate. Then we examine how climate change has disrupted this business model. This primer on insurance withdrawal underscores the relationship between climate change and insurance, and it foreshadows the connection between insurance and housing affordability.

At the outset, we present a stylized overview of the property insurance business model.⁶² Property owners enter insurance contracts to protect themselves financially against large liabilities, such as a house catching fire. Under these insurance contracts, the property owner agrees to pay a certain sum, termed a “premium,” to the insurer. In exchange, the insurer agrees to pay the property owner’s costs of certain covered hazards, (e.g., a house fire or storm damage, if they arise).

The insurer’s business viability relies on the insurer collecting sufficient premiums to cover all contractual hazard payments and still retain a profit. Thus, fundamentally important to insurers are (1) the ability to predict risk, (2) the ability to diversify risk to avoid correlated payment obligations, (3) the ability to set premiums, and (4) the ability to access sufficient capital to weather payment obligations in bad years. All of these considerations are interrelated, and each bears a bit more explanation.

First, insurers seek to predict the likelihood of covered hazards occurring so they can calculate the likely costs they will face in paying claims, (i.e., their potential liabilities). For example, if an insurer is going to cover hurricanes in a coastal area, it needs to predict the likelihood of a hurricane impacting that area as well as the likely cost of those impacts. The more accurate their risk predictions, the more accurately they can estimate potential liabilities.

Second, insurers attempt to gather a large and varied client pool to diversify their risk exposure (again, based on their risk predictions). That way they can collect premiums from the whole client pool while only paying claims to relatively few members of the client pool who experience covered hazards. So, for example, an insurer typically would not want all their clients to be in the same zip code of a coastal area, because if a hurricane struck that zip code, the insurer would have to honor many simultaneous claims and possibly pay more than they gathered in premiums.

Third, based on their potential liabilities and diversified risk profiles, insurers try to set premiums high enough to cover all their liabilities and still retain a profit. For example, if an insurer predicts that, across their entire portfolio, they are likely to incur one hundred million dollars in liabilities for a given year, they will want to set premiums such that they collect more than one hundred million dollars to cover expenses and leave room for profit.

62. See generally Nevitt & Pappas, *supra* note 26, at 1611–13.

Fourth, insurers need to have enough capital available to fulfill payment obligations not only in “good years” but also in “bad years.” In a good year for insurers, actual liabilities are equal to or below predicted liabilities. Thus, premiums collected exceed claims paid. In good years, the insurer makes a profit and possibly even holds additional capital in reserve to cover unexpected liabilities in the future. For instance, if an insurer collected premiums totaling one hundred million dollars and ended up paying only fifty million dollars in claims that year, it was a good year, with a surplus of fifty million dollars.

In a bad year for insurers, claims paid exceed premiums collected, meaning that the insurer makes no profit and possibly even takes a loss. For instance, if an insurer collected premiums totaling one hundred million dollars and ended up paying two hundred million dollars in claims that year, it was a bad year. It yields no profits, and likely eats away at capital reserves. As bad years can arise, even with relatively accurate risk predictions,⁶³ insurers must have the financial ability to make payments even if liabilities exceed the premiums collected. Thus, insurers must have either sufficient capital reserves or “reinsurance” that gives them access to capital.⁶⁴

So, if an insurer can predict risk fairly accurately, can diversify their risk pool, can set premiums accordingly, and can access capital, the insurer is well positioned. They are likely to be profitable most of the time, and they can weather bad years.

Before moving to how climate change has destabilized this insurance business model, there is one more aspect of insurance operation to note: insurers operate in regulated environments. States regulate insurance markets, and states have the power to control premium rate increases or to dictate the terms of insurance coverage and protection.⁶⁵ Thus, insurers set premium rates and contract terms not only based on their internal business calculations but also according to the parameters of state regulations. Still, even with these regulatory constraints, the property insurance model described above functioned with relative stability. At least it did until the impacts of climate change upset many of its foundational elements.

To understand how climate change impacted this model, recall that insurers need to (1) predict risk, (2) diversify risk to avoid correlated payment obligations, (3) set premiums, and (4) access sufficient capital to weather payment obligations in bad years. Climate change complicated each of these.

First, with climate change exacerbating disaster impacts and making previously secure areas more vulnerable, insurers have a harder time predicting risk. Further, as climate change multiplies the impacts of hazards, insurers must pay more than they had previously forecast for given risks. In essence, hazards have become more frequent and more severe than insurers had previously predicted.⁶⁶

Second, since climate change makes risk predictions more difficult, insurers have a harder time diversifying risk. For example, when “a warming planet makes

63. Note that bad years can occur even if risk prediction is relatively accurate because anomalously hazardous years (e.g., a year with a large number of particularly damaging hurricanes) can happen even if a risk prediction is accurate on average. In such an instance, over time the good years will outnumber and offset the bad ones.

64. Reinsurance arrangements involve secondary contracts that follow the same insurance structures discussed above. Insurers pay premiums to reinsurers, and reinsurers agree to cover certain agreed financial losses, such as payment liabilities that exceed the insurer's capital reserves.

65. Flavelle, *supra* note 13.

66. Nerkar & Flitter, *supra* note 19.

events like hail and wind storms worse,” it becomes harder to assemble a diverse risk pool because formerly lower-risk regions are now higher risk.⁶⁷

Third, in response to more uncertainty about risk, insurers have sought to raise premiums. However, these premium increases have sometimes run afoul of state regulations that limit premium rates or cap increases per year. So, in some states, insurers are unable to raise rates sufficiently for their business models. For example, California has been criticized for delaying rate increases and for not allowing rates to rise in response to projected cost increases or rising reinsurance costs.⁶⁸

Finally, climate change has challenged insurers’ abilities to weather bad years. As one article describes, “As the planet warms and storms and fires grow more intense, the cost of disasters is increasing faster than insurers can afford. A financial model designed for a mix of good and bad years threatens to unravel as more years become bad years.”⁶⁹ Further, these same trends are making reinsurance more difficult to obtain, even from “global giant” reinsurance outfits.⁷⁰

With climate change disrupting risk predictions,⁷¹ pushing premiums into conflict with regulatory limits,⁷² and impeding reinsurance,⁷³ insurers are withdrawing. They are raising prices, limiting coverage, and, in some cases, leaving states entirely. This is occurring throughout the United States. Insurers have withdrawn from Florida, California, Louisiana, and Hawaii. And also from Colorado, Iowa, Arkansas, Ohio, Utah, and Washington.⁷⁴ And Illinois, Indiana, Michigan, Ohio, and Wisconsin,⁷⁵ just to name a few. The list is long, and it continues to grow. “A struggling homeowners insurance market ‘used to be a coastal problem. . . . It’s now ubiquitous. It’s found in every corner of our country.’”⁷⁶

C. Impacts of Insurance Withdrawal on Individual Property Owners

Just as the climate crisis spawned the insurance crisis, so the insurance crisis escalates the affordable housing crisis. As property insurers withdraw because of climate change,⁷⁷ property insurance becomes less available and less affordable.

67. Flavelle, *supra* note 13.

68. Peter Coy, *Why California and Florida Have Become Almost Uninsurable*, N.Y. TIMES (July 21, 2023), <https://www.nytimes.com/2023/07/21/opinion/california-florida-insurance-climate-change.html> [perma.cc/G8V7-3VFW]. See also Daniel Schwarcz, *Ending Public Utility Style Rate Regulation in Insurance*, 35 YALE J. REG. 941 (2018) (criticizing state-based regulation of “excessive” rates).

69. Flavelle, *supra* note 13.

70. *Id.*

71. *Id.*

72. Coy, *supra* note 68.

73. Flavelle, *supra* note 13. See also Emily Flitter, *How a Small Group of Firms Changed the Math for Insuring Against Natural Disasters*, N.Y. TIMES (Aug. 16, 2023), <https://www.nytimes.com/2023/08/16/business/reinsurance-global-crises.html> [perma.cc/9AE2-5PUF] (noting how reinsurance prices are rising).

74. Flavelle, *supra* note 13.

75. *Id.*

76. *Id.*

77. While climate change may not be the only cause of property insurance withdrawal, the above discussion suggests that it is an extremely important one. Cf. Flavelle, *supra* note 11 (“To be sure, climate change isn’t the only thing driving insurers’ decisions. State regulation, the rising cost of construction, fraud and litigation, and even changes to the global reinsurance market all play a role. But unlike those other factors, climate change doesn’t respond quickly to policy changes, nor is it cyclical. Disasters are going to keep getting worse.”).

This, in turn, financially squeezes individual property owners, who usually want to, and often must, carry property insurance. In response, some property owners have adopted climate adaptation measures either to retain their property insurance or to mitigate risks that are no longer covered by insurance. In this way, insurance withdrawal has been a catalyst for individual climate adaptation. At the same time, insurance withdrawal has also been a catalyst for financial precarity, leaving some property owners distressed and stranded while also diminishing housing affordability and economic stability more broadly.

Property insurance is important, and sometimes essential, to property owners. For some, it is merely a responsible investment. Property insurance smooths out otherwise large, sudden costs, such as fire damage. But some owners have the financial resources to effectively self-insure and withstand such costs as they arise. Property insurance is also a requirement to get a mortgage, but some also have the resources to buy a home without financing. Still, even for those with means, unavailable or expensive property insurance can sting. For others, however, property insurance is a necessity. Without it, both a mortgage and home ownership become unattainable.⁷⁸ And, for those who cannot afford to self-insure, a hazard cost is potentially devastating.

In either case, climate-induced insurance withdrawal “is where many people are feeling the economic impacts of climate change first.”⁷⁹ That is, insurance is the most direct climate change cost for many people. As a result, some commentators have suggested that insurance withdrawal might finally motivate a broader segment of society to consider climate change an urgent crisis.⁸⁰ Whether that proves true or not, insurance withdrawal has already induced some climate adaptation measures. It has also forced a broader set of property owners to contend with the financial instability.

In some cases, insurance withdrawal has catalyzed individual climate adaptation. For instance, some homeowners have undertaken resilience measures, such as home elevations, expressly to avoid rising insurance rates.⁸¹ There are also examples of affordable housing adopting more resilient building standards because of the cost of insurance or a lack of insurance availability.⁸²

That said, not all property owners can afford such resilience adaptation, nor can they afford rising insurance costs. This financial strain has forced some property owners to relocate.⁸³ For example, one Florida realtor reported “as many as thirty of the one hundred houses her real estate team sold in and around Jupiter, Fla., last year were put on the market because their owners could no longer keep up with

78. *Id.*

79. Flavelle, *supra* note 13.

80. Flavelle, *supra* note 11.

81. *See, e.g.,* Mazzei, *supra* note 33.

82. *See, e.g.,* Chen, *supra* note 21 (citing examples of Habitat for Humanity projects in Kentucky adopting voluntary resilience standards).

83. Such relocation could represent a type of climate-adaptive retreat, albeit a harsh and unaided one, if the vulnerable properties were ultimately depopulated. However, evidence shows that sometimes these properties are immediately repopulated, typically by those with more financial ability to pay high insurance costs or to invest in resilience.

skyrocketing home insurance.”⁸⁴ Subsequently, “the houses sold easily, but often to well-off cash buyers who could drop the insurance altogether because they did not have a mortgage that required them to carry it.”⁸⁵ Another story, from a different area in Florida, describes a similar dynamic in an area where climate-exacerbated flooding is now common.⁸⁶ Some owners chose to leave, and some owners could afford to adapt and raise their homes, but some owners were financially stuck, unable to afford resilience measures and unable to move.⁸⁷ Nonetheless, those with financial means were “still buying in the area.”⁸⁸

These stories show the impacts of insurance withdrawal on affordable housing. In some instances, insurance withdrawal has forced financially insecure property owners to sell to wealthier buyers. In other cases, individuals have been stranded in vulnerable properties because they are unable to afford insurance and unable to afford moving.⁸⁹

Further, insurance withdrawal has also impacted the development and construction of affordable units. “From Rhode Island to Louisiana, and Texas to Washington, developers of affordable housing have been reeling from exponential surges in property insurance premiums.”⁹⁰ “Moreover, without sufficient insurance, people have also struggled to rebuild their homes after disasters.”⁹¹

In addition to these impacts on housing affordability, insurance withdrawal also portends broader economic instability:

Without insurance, you can’t get a mortgage; without a mortgage, most Americans can’t buy a home. Communities that are deemed too dangerous to insure face the risk of falling property values, which means less tax revenue for schools, police, and other basic services. As insurers pull back, they can destabilize the communities left behind, making their decisions a predictor of the disruption to come.⁹²

Moreover, “Senator Sheldon Whitehouse of Rhode Island, Chair of the Senate Budget Committee . . . has expressed concern that the withdrawal of home insurance could create a 2008-style housing crash.”⁹³

The upshot is that insurance withdrawal forces property owners to confront the costs of climate change as individual costs. And this realization has been abrupt and overwhelming for many people. In some cases, insurance withdrawal has incentivized individual adaptation to climate change, whether through resilience or retreat. In other instances, it has trapped people in harsh financial transitions, adding to the challenges of affordable housing.

84. Jeanna Smialek, *Home Insurance Is Clobbering Consumers. Yet It’s Barely Counted in Inflation*, N.Y. TIMES (May 29, 2024), <https://www.nytimes.com/2024/05/29/business/economy/home-insurance-inflation.html?smid=em-share> [perma.cc/WE78-X3MZ].

85. *Id.*

86. Mazzei, *supra* note 33.

87. *Id.*

88. *Id.*

89. *See, e.g., id.*

90. Chen, *supra* note 21. For an additional article linking climate and home affordability, see Rojanasakul & Popovich, *supra* note 38.

91. Flavelle, *supra* note 13.

92. Flavelle, *supra* note 11. *See also* DePillis, *supra* note 36.

93. Nevitt & Pappas, *supra* note 26, at 1620.

D. State Responses to Insurance Withdrawal

Insurance withdrawals, and their impacts on affordability, have pushed a huge number of property owners to ILR programs, which now represent the only insurance option available to many people. This Section situates ILRs in the context of state policy responses to insurance withdrawal, showing how ILRs have emerged as states' most significant insurance policies. This also provides backdrop for the assertion (in Section E) that ILR programs have been thrust to the forefront of climate adaptation and housing affordability policies as well.

As insurance withdrawal forces people to face abrupt financial transitions, states have reacted in two ways (which are not mutually exclusive): (1) trying to retain private insurers, and (2) turning to ILRs as an alternative to private insurance.

1. Policies to Retain Private Insurers

In efforts to staunch insurance retreat and retain private insurers, states have explored regulatory changes. For example, some states are loosening restrictions on insurance premiums or allowing for premium rates to increase more quickly. Such policies reflect a more *laissez-faire* approach, allowing insurers to set premium prices according to their own financial calculations.⁹⁴ This approach primarily aims at assuring insurance *availability* by allowing insurers to charge what they deem necessary to continue operating a profitable business. But, as might be obvious, it does nothing to promote *affordability*. Quite the contrary.

For instance, some states “have been experimenting with new ways to halt the erosion of their markets [by] giving concessions to insurers that stick around, including making it easier to charge higher premiums.”⁹⁵ Other efforts include “trying to make it easier for insurers to earn more profits, or shift more cost onto homeowners.”⁹⁶ Additionally, Louisiana and Washington “have sped up the process for insurance companies to raise their premiums.”⁹⁷

This approach to easing rate regulation is consistent with the work of Professor Dan Schwarcz,⁹⁸ who has suggested that state regulators have kept rates artificially low relative to the risk profiles that insurers now face from climate change.⁹⁹ Professor Schwarcz has argued that relaxing rate restrictions will allow market forces to incentivize climate adaptation, whether in the form of resilient infrastructure or retreat.¹⁰⁰ Op-eds from other academics have more recently advocated for similar measures, also noting that insurance pricing spurs adaptation benefits such as retreat from vulnerable places.¹⁰¹ As a recent piece put it:

Financial markets, if left to their own devices, would naturally force Americans to confront the ugly realities of our changing climate and deter them from flocking to places where human habitation is

94. *Id.*

95. Flavelle, *supra* note 11.

96. Flavelle, *supra* note 13.

97. Flavelle, *supra* note 11.

98. *See* Schwarcz, *supra* note 68.

99. *See, e.g.,* Flitter, *supra* note 18.

100. *Id.*

101. Parinitha R. Sastry & Ishita Sen, *We Have to Stop Underwriting People Who Move to Climate Danger Zones*, N.Y. TIMES (Jan. 16, 2025), <https://www.nytimes.com/2025/01/16/opinion/la-fires-climate-home-insurance.html> [perma.cc/CW4U-G4SV].

increasingly untenable. . . . In theory, insurance prices quantify the risks of living in a certain place. Of course it should be more expensive to insure a home in an area buffeted by disaster.¹⁰²

However, more affordability-minded advocates have criticized this approach,¹⁰³ which they fear would likely make housing less affordable unless coupled with other policies aimed to ease financial burdens.

Other state responses to insurance withdrawal have taken different tacks, such as seeking insurance *affordability*. Some aim squarely at the intersection of climate adaptation and insurance cost. For instance, some states require insurance premiums to recognize resilience efforts that reduce hazard risks:

California is requiring that insurers give discounts to homeowners who install fire-resistant roofs or make other changes to reduce their risk, with the idea that insurers will have to pay out less money as a result. Minnesota has likewise required insurers to offer discounts to people who make their homes more resilient against storms; Kentucky and Georgia recently passed similar legislation.¹⁰⁴

Whether any of these policies will slow or halt private insurance retreat is to be determined.¹⁰⁵

2. ILR Programs as Alternatives to Private Insurance

Another policy response to private insurance withdrawal is to provide an alternative to the private insurance market. This is the role that state ILR programs have played. As private insurance withdrawal has driven more and more people to ILR programs, these ILRs have become states' most important insurance policies.

ILR programs bear the name “insurers of last resort” for a reason. States adopted ILR programs to provide property insurance options for those who cannot otherwise obtain private insurance. Part II examines ILR programs in detail. For now, it suffices to say that ILRs respond to private insurance withdrawal by providing property owners another insurance option. ILRs exist to provide property insurance policies when private insurance is unavailable.

In truth, to call ILR programs a “response” to climate-driven insurance withdrawal is a bit misleading. As discussed in Part II, most ILR programs predate by decades both climate concerns and the current phenomenon of insurance withdrawal. However, preexisting ILR policies have become increasingly important as climate concerns propel insurance withdrawal because many property owners are forced to turn to ILR programs for insurance availability. As a result, extant ILR programs have become a major component of states' policy response to insurance withdrawal. The practical importance of ILR policies has ballooned as private insurance withdrawals unfold.

For instance, because of recent insurance withdrawals, ILR enrollments have skyrocketed. News stories about insurance withdrawal report that “[t]hose who can't get insurance on the private market are flooding into state-mandated insurance

102. *Id.*

103. Flitter, *supra* note 18.

104. Flavelle, *supra* note 13.

105. Flavelle, *supra* note 11.

pools of last resort”¹⁰⁶ and that “[s]o many homeowners have flooded into Florida’s state-backed high-risk pool that it is now the state’s largest insurer.”¹⁰⁷ Even beyond the headline news, the data about ILR enrollment remains striking. “The current scope of state insurance programs is poised to far outstrip historic levels. [ILR] plan enrollments have more than doubled in recent years, and by one estimate, Florida’s [ILR] has recently underwritten 1.2 million policies—almost triple the number from 2019.”¹⁰⁸

Just by the numbers, ILRs likely represent the biggest state answer to private insurance retreat.

E. ILRs as De Facto Climate Adaptation and Housing Affordability Policy

In addition to being insurance policies, ILRs are also, de facto, climate and housing policies. In fact, ILRs probably represent the most important climate adaptation policies in the United States, even if ILRs are not necessarily thought of as adaptation measures. Further, ILRs are also effectively major housing affordability policies.

It bears repeating: ILR programs are probably the most impactful climate adaptation policies the United States. These programs impact more *people*, more *directly*, more *dynamically* than do the targeted adaptation policies summarized in Section A.

To begin, ILR programs impact *more people* than do more commonly recognized climate adaptation policies. Insurance availability impacts an incredible number of property owners across the majority of states. ILR programs, in turn, are enormously influential on insurance availability and affordability. Thus, ILRs touch a staggering number of people, and their incentive effects influence adaptation decisions and housing affordability across the country. Moreover, with insurance withdrawals continuing and possibly expanding,¹⁰⁹ ILRs will likely impact a growing number of property owners. Thus, ILRs are especially important because of the sheer number of people suddenly dependent on them.

This greatly outstrips the influence of targeted climate adaptation policies, such as resilient building codes, which affect far fewer people. Resilient building codes are typically implemented at the local level, so they only impact certain localities. And, indeed, only a small subset of localities have adopted such codes. Moreover, even statewide resilient building codes are typically only prospective. They do not impact existing structures. ILR programs, on the other hand, have statewide impacts in most states, and they bear on both preexisting and new structures.

ILR programs also generate *more direct* impacts on individuals than do traditionally conceived adaptation policies. Insurance costs send immediate price signals to individuals. These costs inform property owners about risks they face, and they prompt individual choices about adaptation measures like resilience and

106. Flavelle, *supra* note 13.

107. *Id.*

108. Nevitt & Pappas, *supra* note 26, at 1621.

109. See *infra* Part II. It is possible that other state policies intended to forestall insurance withdrawal, such as relaxed regulation of premium rates, could change the insurance withdrawal trend. But that is not yet clear.

retreat. ILR programs influence the price signals that private markets send—leaving costs alone in some states, lowering them in others, and even raising them sometimes—but ILR programs still send price signals. Thus, ILRs communicate risk costs and adaptation incentives to a large swath of property owners. In doing so, they directly influence property owners' decisions.

Again, we can contrast this with other adaptation policies, which do not send such direct signals influencing resilience or retreat. For instance, while resilient building codes provide guidelines for adaptive measures, they do not communicate incentives for adaptation. They do not push people to adapt the same way that insurance prices might. Further, while resilient building codes might impose construction standards that influence the price of rebuilding, these pricing signals only influence behavior that is subject to the code. These codes may not directly influence any behavior of property owners who are not considering rebuilding or remodeling. Put simply, ILR programs tangibly impact how people behave more than other adaptation policies do.

Finally, state responses to insurance withdrawal impact people *more dynamically* than do other climate adaptation policies. Both in the private market and in ILR programs, insurance rates are far from static. Every year, insurance rates update based on new information about risk. This means that every year, property owners must readjust to a new set of price signals and incentives about adaptive choices. This represents continuously updated feedback on risk and adaptation incentives. Conversely, targeted adaptation policies like resilient building codes do not typically update dynamically. They may take years to adopt and years more, if ever, to amend.

For all these reasons, ILRs loom large as massively impactful climate adaptation policies. Appreciating this reveals major opportunities for states to more effectively implement their climate adaptation goals (discussed in Part IV).

Further, ILR programs provide options for states to shape both climate adaptation *and* housing affordability. As Part IV develops in more detail, ILR programs allow states to incorporate multiple considerations as they respond to insurance withdrawals. Thus, states can tailor their responses to address both climate risks and financial concerns. In fact, some ILR policies already incorporate explicit affordability goals.¹¹⁰

Thus, ILR programs represent potent intersectional policies for addressing insurance, climate, and housing exigencies. The Article makes this assertion as a descriptive matter, though it has normative implications. The dynamics between climate, insurance, and housing, and the impacts of ILRs on the everyday life of property owners, necessarily thrust ILRs to the forefront of not only insurance but also climate adaptation and housing policy. So, we may have little choice but to accept that ILRs will be expansive crisis-response policies, even if states have yet to consider them in this way.¹¹¹

This descriptive account leads to a normative claim: We *should* be thoughtful about how ILRs, as de facto climate adaptation and housing affordability policies, reflect our considered goals. To that end, the remainder of this Article focuses on ILR programs, their intersection with climate adaptation and housing affordability, and how they might be shaped to better reflect and effectuate states' policy goals.

110. See *infra* Parts II and IV.

111. See *infra* Part III.

II. STATE ILR POLICIES

As discussed above, state ILR programs have become enormously important, but they are not necessarily well known. In fact, legal literature has yet to closely examine them. So, this Part introduces the basics of ILR programs, along with some of their notable details and distinctions.

Section A begins by surveying existing ILR programs. In doing so, it uncovers that while ILR programs might represent some of the most important climate adaptation and housing policies in the United States, most of these policies (the “FAIR plans” of twenty-nine states) were not designed with climate or housing in mind. In fact, most are vestiges of 1960s concerns with urban unrest and have not been updated in light of current insurance withdrawal scenarios. This offers insights not only into existing ILR programs but also into why seventeen states have no ILR program at all. The survey of ILR programs also reveals some subtle differences between plans, and these variations may prove important for climate adaptation and housing affordability design (discussed in Part IV).

Section B then examines insurance data suggesting that there will be increasing pressure for states without ILRs to adopt new ILR programs in the near future. This further underscores the need to understand current ILR programs and to appreciate how states adopting them might direct their influence on climate adaptation and housing.

A. Survey of State ILR Policies

State ILR programs fall into seven categories: (1) statewide “FAIR plans” that *guarantee* coverage for natural disaster risks (twenty-three states), (2) no insurer of last resort (seventeen states), (3) statewide FAIR plans that *do not guarantee* coverage for natural disaster risks (two states), (4) *both* statewide FAIR plans and separate “wind pool” plans for coastal storm coverage (four states), (5) coastal wind pool plans *without* statewide FAIR Plan coverage (two states), (6) guaranteed coverage mandated above market rate (La. Citizens) (one state), and (7) guaranteed coverage subsidized by the state (Fla. Citizens) (one state).¹¹² The following Sections 1–7

112. See the following sources for individual state ILR program information: ALA. INS. UNDERWRITING ASS'N, <https://www.aiua.org> [perma.cc/ENT7-GUNH] (last visited Jan. 24, 2025); CAL. FAIR PLAN PROP. INS., <https://www.cfpnet.com> [perma.cc/S275-YNKA] (last visited Jan. 24, 2025); COLO. FAIR PLAN, <https://coloradofairplan.com> [perma.cc/S3MP-K67D] (last visited Jan. 24, 2025); CONN. FAIR PLAN, <https://ctfairplan.com> [perma.cc/UZZ9-D4A9] (last visited Jan. 24, 2025); INS. PLACEMENT FACILITY OF DEL., <https://defairplan.com> [web.archive.org/web/20250909063147/https://www.defairplan.com/] (last visited Jan. 24, 2025); CITIZENS PROP. INS. CORP., <https://www.citizensfla.com> [perma.cc/523A-USP2] (last visited Jan. 24, 2025); GA. UNDERWRITING ASS'N, <https://www.georgiaunderwriting.com> [perma.cc/AL7T-6FE9] (last visited Jan. 24, 2025); HAW. PROP. INS. ASS'N, <https://www.hpiainfo.com> [perma.cc/QQJ7-42UM] (last visited Jan. 24, 2025); ILL. FAIR PLAN ASS'N, <https://illinoisfairplan.com> [perma.cc/77HL-8SAE] (last visited Jan. 24, 2025); IND. FAIR PLAN, <https://indianafairplan.com> [perma.cc/3LBR-KY7S] (last visited Jan. 24, 2025); IOWA FAIR PLAN ASSOCIATION, <https://iowafairplan.com> [perma.cc/5HRU-SFDE] (last visited Jan. 24, 2025); KAN. FAIR PLAN, <https://ksfairplan.com> [perma.cc/DR8B-EMJA] (last visited Jan. 24, 2025); KY. INS. PLANS, <https://kyinsplans.org/fair/> [perma.cc/TM54-B6GS] (last visited Jan. 24, 2025); LA. CITIZENS PROP. INS. CORP., <https://www.lacitizens.com> [perma.cc/D4GX-VAYG] (last visited Jan. 24, 2025); MD. JOINT INS. ASS'N, <https://www.mdjia.org> [perma.cc/P4FH-Z9V7] (last visited Jan. 24, 2025); MASS. PROP. INS., <https://www.mpiua.com/about-us/> [perma.cc/6WKP-EUSC] (last visited Jan. 24, 2025); MICH. BASIC PROP. INS. ASS'N, <https://www.mbpia.com> [perma.cc/6W6A-KR7D] (last visited Jan. 24, 2025);

explain these categories, then Section 8 presents a table showing the breakdown of states within these categories.

In addition to compiling information to better understand ILR programs, this survey provides background for further analysis in Part III and in future work. Most relevant to Part III, one major revelation is that FAIR plans (operative in twenty-nine states) were initially adopted out of concern over urban rioting in the 1960s. This history helps explain why many FAIR plans do not appear to account for climate-exacerbated harms as well as why seventeen states do not have any ILR programs at all. As taken up in Part III, this offers some insight into why ILR policies do not seem to align with states' otherwise consistent climate policy preferences.

Further, and important for future work, this survey shows a high degree of uniformity across most ILR programs, especially FAIR plans. However, it also exposes some subtle but potentially important distinctions regarding whether FAIR plan programs guarantee coverage or not. Later work will explore these policy variations and their potential uses as states adopt or reconsider ILR programs.

Now, to the survey.

1. Statewide "FAIR plans" that Guarantee Coverage for Natural Disaster Risks (Twenty-Three States)

The largest category of state ILR programs is those that have adopted "FAIR plans" guaranteeing statewide insurance coverage for natural disasters.¹¹³

Though today these plans represent increasingly important climate policies,¹¹⁴ their origin predated a knowledge of climate change. In fact, FAIR plans arose in response to urban instability, and its attendant fire risk, rather than natural disaster hazards from wildfires, winds, or storms.

MISS. UNDERWRITING ASS'N, <https://msplans.com> [perma.cc/F4V6-T6S6] (last visited Jan. 24, 2025); MO. FAIR PLAN, <https://missourifairplan.com> [perma.cc/KSK3-MZKB] (last visited Jan. 24, 2025); N.J. INS. UNDERWRITING ASS'N, <https://portal.njiua.org> [perma.cc/9W2M-AMNW] (last visited Jan. 24, 2025); N.M. F.A.I.R. PLAN, www.nmpropertyinsurance.com [perma.cc/48ZS-DJLW] (last visited Jan. 24, 2025); N.Y. PROP. INS. UNDERWRITING ASS'N, <https://www.nypiua.com> [perma.cc/6TSY-UE5U] (last visited Jan. 24, 2025); N.C. JOINT UNDERWRITING ASS'N, <https://www.ncjua-nciua.org> [perma.cc/2GYG-58UH] (last visited Jan. 24, 2025); OHIO FAIR PLAN UNDERWRITING ASSOCIATION, <https://ohiofairplan.com> [perma.cc/CFJ9-R84T] (last visited Jan. 24, 2025); OR. FAIR PLAN ASS'N, <https://orfairplan.com> [perma.cc/D6U2-PQTN] (last visited Jan. 24, 2025); INS. PLACEMENT FACILITY OF PA., <https://pafairplan.com> [web.archive.org/web/20250814012355/https://www.pafairplan.com/] (last visited Jan. 24, 2025); R.I. JOINT INS. ASS'N, <https://www.rjra.com> [perma.cc/6TXA-VATM] (last visited Jan. 24, 2025); S.C. WIND & HAIL UNDERWRITING ASS'N, <https://scwind.com> [perma.cc/H5LS-DKVX] (last visited Jan. 24, 2025); TEX. WINDSTORM INS. ASS'N, <https://www.twia.org> [perma.cc/D5G8-9QAW] (last visited Jan. 24, 2025); TEX. FAIR PLAN ASS'N, <https://www.texasfairplan.org> [perma.cc/HAY8-XQPF] (last visited Jan. 24, 2025); VA. PROP. INS. ASS'N, <https://www.vpia.com> [perma.cc/3DA4-N99K] (last visited Jan. 24, 2025); WASH. FAIR PLAN ASS'N, <https://www.wafairplan.com> [perma.cc/7KHZ-MWRF] (last visited Jan. 24, 2025); W. VA. ESSENTIAL PROP. ASS'N, <https://wvfairplan.com> [web.archive.org/web/20250804224823/https://www.wvfairplan.com/] (last visited Jan. 24, 2025); WISCONSIN INSURANCE PLAN, <https://www.wisinsplan.com> [perma.cc/QWF2-5XXJ] (last visited Jan. 24, 2025). States with no ILR programs simply have no information on the subject.

113. For a table of state ILR programs, see *infra* Part II Section 8.

114. See *supra* Part I.

The Massachusetts FAIR plan explains its genesis, and the origins of all FAIR plans, as follows:

FAIR Plans are the outgrowth of the national emergency created by three years of rioting in American cities, beginning with the Watts outbreak in 1965. When the rioting of the 1960s suddenly mushroomed to disastrous proportions, the [insurance] companies found themselves in the position of having to pay losses in excess of one hundred million dollars, on which they had collected no specific premium. Although the companies paid these losses, their capacity was severely taxed and their normal riot reinsurance market had dried up. It became obvious that emergency revisions of underwriting and reinsurance procedures were necessary for the future protection of urban property and urban existence.

A national advisory panel appointed by President Johnson warned that the revitalization of the nation's cities would be impossible without fair access to property insurance. It then set forth its recommendations to provide federal riot reinsurance to companies writing in riot prone states if FAIR Plans (Fair Access to Insurance Requirements) were established to resolve the availability of insurance protection in urban areas.

Congress enacted the Urban Property Protection and Reinsurance Act of 1968, which authorized the establishment of FAIR Plans and made available federal riot reinsurance to the companies. The Massachusetts Legislature responded [and] formed the Massachusetts Property Insurance Underwriting Association under regulatory supervision of the Massachusetts Insurance Department. The Commissioner of Insurance further designated the entire commonwealth an "Urban Area," with the result that FAIR Plan coverage is available on a statewide basis.¹¹⁵

Most states that adopted FAIR plans did so in a way similar to Massachusetts: almost all FAIR plans were established between 1968 and 1970 and were ultimately configured to provide statewide insurance.

As for the operational and financial mechanics of FAIR plans, though FAIR plans are created by state law, they otherwise function as private entities. States create FAIR plans via statutes establishing an insurance association (typically a non-profit) governed by a board of directors (typically populated by insurance-industry representatives). State laws require all insurance companies licensed to write policies in the given state to be members of the FAIR plan insurance association, with companies bearing the FAIR plan's financial profits or losses in proportion to their share of insurance policies written in the state. The FAIR plan association then operates as a private corporation. It makes decisions through its governing board, it administers the FAIR plans, it sets rates (subject to state rate-setting regulation), and it collects premiums on behalf of member organizations. In fact, many states explicitly note that their FAIR plan associations

115. *About Us*, MASS. PROP. INS., <https://www.mpiua.com/about-us/> [perma.cc/52PW-EBM5] (last visited Jan. 24, 2025). *See also History*, OHIO FAIR PLAN UNDERWRITING ASS'N, <https://ohiofairplan.com/Public/AboutOFP.aspx> [perma.cc/9EUT-ML9F] (last visited Jan. 24, 2025) (offering the Ohio FAIR plan's account of this history).

are not state entities and that they are funded privately by their member companies, with no federal or state funding.¹¹⁶

Within this structure, FAIR plans are essentially privately run. Though state laws establish FAIR plans to cover properties that the private market might not, FAIR plans are free to follow market forces and actuarial calculations to determine what premiums to charge (again, subject to state governance of rates). As a result, FAIR plans typically cost more (and provide lesser coverage) than do private-market insurance options. Thus, while the FAIR plans in this category guarantee coverage *availability* (discussed below), they do not guarantee *affordability*. Indeed, some explicitly advertise that they are meant to be a last resort option and are more expensive than their private counterparts.

History shows that almost all FAIR plans, adopted in the late 1960s, originated with no premonition of the current climate-driven insurance situation. And they began without a primary concern for natural disasters (Colorado, however, is a noteworthy exception, having established its FAIR plan in 2023 with wildfire risk as a major motivator.¹¹⁷). But even if most FAIR plans weren't established with climate change—and intensified wildfires, winds, or storms—in mind, today these plans find major relevance as private insurance withdraws from climate-vulnerable areas. FAIR plans are by far the most common ILR programs.

Accordingly, the terms of FAIR plan coverage are increasingly important. And, at least at present, they tend to be fairly similar between states (though, as discussed in Parts III and IV, states may wish to tailor their programs in the future). In fact, FAIR plan states even coordinate with each other through an outside consortium that facilitates exchange of FAIR plan practices and information.¹¹⁸ So, many state FAIR plans share similar (often verbatim) terms, operating procedures, underwriting policies, and other aspects.¹¹⁹ And, at core, FAIR plans all do essentially the same thing: typical FAIR plans offer basic homeowners insurance against fire, and they offer extended insurance against wind, hail, and other storm perils, with maximum coverages ranging between \$250,000 and \$1 million.¹²⁰ As compared with standard private property insurance plans, these FAIR plans are more limited, covering fewer hazards and offering lower coverage caps.¹²¹

116. See, e.g., *The Delaware FAIR Plan*, INS. PLACEMENT FACILITY OF DEL., <https://defairplan.com> [web.archive.org/web/20250909063147/https://www.defairplan.com/] (last visited Jan. 24, 2025).

117. *About*, COLO. FAIR PLAN, <https://coloradofairplan.com/about> [perma.cc/3342-29WB] (last visited Jan. 24, 2025).

118. See *About Us*, PROP. INS. PLANS SERV. OFF., <https://pipso.com/about/> [perma.cc/BS42-BRDP] (last visited Jan. 24, 2025). Note that private insurers also coordinate and standardize practices through their own organizations. See Daniel Schwarcz, *Reevaluating Standardized Insurance Policies*, 78 U. CHI. L. REV. 1263 (2011).

119. Again, this can also be true of private insurers. See Schwarcz, *supra* note 118.

120. See, e.g., *IND. FAIR PLAN*, <https://indianafairplan.com> [perma.cc/8K9M-9F8G] (last visited Jan. 24, 2025).

121. For example, FAIR plan coverage can be contrasted with standard private homeowner's coverage, termed HO-3, that covers sixteen named perils, the most common of which include "fire, windstorms, accidental water damage, theft, weight from ice and snow, vandalism, explosions, freezing pipes." See Shannon Martin, *What Is an HO-3 Insurance Policy for Homeowners?*, BANKRATE, <https://www.bankrate.com/insurance/homeowners-insurance/ho3/#what-does-an-ho-3-policy-cover> [perma.cc/8SWX-H6HP] (last visited Jan. 24, 2025).

Importantly, most FAIR plans *guarantee* coverage regardless of natural disaster risk (a defining feature of all the plans discussed in this category). That is, these plans will not decline or cancel coverage on the basis of environmental risk factors—the plans say as much. They have common cut-and-paste phrasings in their underwriting policies or operating procedures like, “Neighborhood or area location (environmental hazard) shall not be considered in determining acceptability in the FAIR Plan;”¹²² or “The association shall not refuse to insure any risk because of an environmental hazard;”¹²³ or “The Association shall not decline or cancel any risk for reasons of neighborhood or area location or any environmental hazard beyond the control of the property owner.”¹²⁴

A small number of these FAIR plans do currently acknowledge natural disaster vulnerabilities—noting that these risks may increase premiums,¹²⁵ advising that mitigation measures can lower these risks,¹²⁶ or even incentivizing risk mitigation through cost discounts.¹²⁷ But these plans still offer assurance that insurance will be available regardless of these vulnerabilities. For this reason, these plans, adopted in twenty-three states, are categorized as “Statewide FAIR plans that *guarantee* coverage for natural disaster risks.”¹²⁸

2. No Insurer of Last Resort (Seventeen States)

In contrast to the FAIR plan states described above, states falling into this “no insurer of last resort” category leave availability of insurance to the private, voluntary market.¹²⁹ This “no-ILR” approach effectively adopts a noninterventionist approach to insurance availability.

As the category name implies, these states have no insurer of last resort program. Within these states, private insurers offer homeowners insurance, and while these private insurers are regulated in various ways by state insurance commissions,¹³⁰ the availability of homeowners insurance is subject to market decisions by private insurance companies. Thus, if a homeowner in one of these

122. MISSOURI PROPERTY INSURANCE PLACEMENT FACILITY, PRODUCER GUIDE 4 (2024), <https://missourifairplan.com/assets/pdfs/new/Producer%20Manual.docx> [perma.cc/3XUN-V625].

123. *Plan of Operation*, OHIO FAIR PLAN UNDERWRITING ASS’N, <https://ohiofairplan.com/Public/PlanOfOperation.aspx> [perma.cc/ZYG9-XJWV] (last visited Jan. 24, 2025).

124. *Basic Property Insurance Inspection and Placement Program*, R.I. DEP’T OF STATE, <https://rules.sos.ri.gov/regulations/part/230-20-05-11> [perma.cc/5Q92-HZMX] (last visited Jan. 24, 2025); *see also* WIS. INS. PLAN, <https://www.wisinsplan.com> [perma.cc/GJ53-J4PY] (last visited Jan. 24, 2025) (“Insurance plan is to provide basic and affordable property insurance to applicants in Wisconsin without regard to environmental hazards, providing the property is reasonably maintained.”).

125. *See, e.g.*, GA. UNDERWRITING ASS’N, <https://www.georgiaunderwriting.com> [perma.cc/L2L4-YH44] (last visited Jan. 24, 2025).

126. *See, e.g.*, N.M. F.A.I.R. PLAN, www.nmpropertyinsurance.com [perma.cc/48ZS-DJLW] (last visited Jan. 24, 2025); COLO. FAIR PLAN, <https://coloradofairplan.com> [perma.cc/PKT7-HXFE] (last visited Jan. 24, 2025).

127. *See, e.g.*, N.M. F.A.I.R. PLAN, www.nmpropertyinsurance.com [perma.cc/48ZS-DJLW] (last visited Jan. 24, 2025).

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

129. *See infra* Part II Section 8.

130. *See, e.g.*, *About the Department*, WYO. DEP’T OF INS., <https://doi.wyo.gov/about-us> [perma.cc/PHN9-QLYP] (last visited Jan. 24, 2025). An exception to this general statement is the “surplus lines” market, that provides some specialized forms of insurance and that is not as closely regulated by the state. *See, e.g.*, *Frequently Asked Questions (FAQ)*, SURPLUS LINES ASS’N ILL., https://www.slai.org/faq/insured_06.html [perma.cc/GF9V-5QB2] (last visited Jan. 24, 2025).

states cannot secure insurance through the private insurance market, there is no program to ensure insurance availability.

States in this category probably do not have ILR programs for historical reasons dating to the 1960s. For instance, their insurance markets may not have been heavily influenced by urban unrest risk. This suggests that the choice not to have ILR programs at present is not necessarily an intentional response to insurance withdrawal nor a considered adoption of a *laissez-faire* approach to insurance (discussed in Part IV). It also suggests that insurance withdrawal pressure may ultimately lead states in this category to consider adopting ILR programs (discussed in Section B, below).

3. *Statewide FAIR Plans that Potentially Do Not Guarantee Coverage for Natural Disaster Risks (Two States)*

The ILR policies adopted by Oregon and Massachusetts, respectively, are FAIR plans like those discussed in Section 1. However, the Oregon and Massachusetts policies exhibit a potentially important distinction from other FAIR plans. The typical FAIR plans, described in Section 1, *guaranteed* coverage despite natural disaster risks. In contrast, the Oregon and Massachusetts underwriting policies contain language suggesting that such coverage *is not guaranteed*, and their underlying state statutes also contain no guarantees.¹³¹ These distinctions in the Oregon and Massachusetts plans are nuanced. And research to date has uncovered no data to say whether these distinctions have yielded different practical outcomes when compared with application of other FAIR plans. Nonetheless, these distinctions appear noteworthy because they show a material divergence from the boilerplate policy coverage in typical FAIR plans. More importantly, these distinctions can show potential directions for future evolution of ILR policies (discussed in Part IV).

For instance, the Oregon plan implies a broader right to decline coverage than do other FAIR plans. The Oregon FAIR plan underwriting guidelines state, “Proximity to elevated concern of wildfire is one of the most frequent reasons for policy non-renewal or declination by standard companies. Exposure to wildfire is not specifically ineligible with the FAIR Plan and we will review each risk independently for eligibility.”¹³² The Oregon underwriting standards then go on to discuss ways to mitigate and reduce wildfire risk and improve qualification for coverage.

While this Oregon underwriting standard is not a statement that it will definitely decline certain risks (and the statement goes out of its way to say that wildfire risk is not “specifically ineligible”), it still implies that Oregon *can* refuse certain wildfire risks. It suggests that the Oregon policy will consider wildfire risk (“review[ing] each risk independently for eligibility”) as grounds for eligibility,¹³³ as opposed to saying that wildfire risk is explicitly *never* grounds for declining coverage.

131. See OR. REV. STAT. §§ 735.005-735.115; Mass. Gen. Laws Part I Title XXII Ch. 175C, § 4 (2023).

132. *Underwriting Guidelines*, OR. FAIR PLAN ASS'N, <https://orfairplan.com/agents/underwriting-guidelines/> [perma.cc/ZXF2-LJ96] (last visited Jan. 24, 2025).

133. *Id.*

Further, nothing in the Oregon statutes establishing the FAIR plan require coverage; the statutes are silent on the matter.¹³⁴

This subtle, but potentially important, non-guarantee in the Oregon policy is more appreciable when compared with New Mexico's policy. New Mexico has the provisions of a typical FAIR plan but says more about wildfire risk than most FAIR plans do. Like the Oregon policy, the New Mexico policy acknowledges wildfire risks. And, similar to Oregon's policy, New Mexico essentially requires property owners to mitigate controllable fire risks.¹³⁵ However, the entirety of the New Mexico underwriting guidelines is contextualized by their first sentence: the oft-repeated FAIR plan guarantee that "[n]o risk shall be declined for neighborhood or area location or any other *environmental hazard beyond the control* of the property owner."¹³⁶ Thus, the New Mexico plan does not allow for declining coverage based on wildfire risk beyond the owner's control. Alternatively, the Oregon policy states that it will review "exposure to wildfire" and all other risks independently, but it gives no indication that it will consider fire risk any differently depending on whether it is inside or outside the owner's control.¹³⁷ Thus, the Oregon policy seems to retain the ability to decline coverage based on environmental hazards, like wildfire risk, in general. Unlike the New Mexico policy, the Oregon policy suggests no guarantee of natural disaster coverage.

Massachusetts also has an underwriting standard that differs from those of most other FAIR plans. The Massachusetts standard potentially disclaims any guarantee of coverage against coastal risks. The Massachusetts FAIR plan underwriting standards maintain:

The right to decline or cancel insurance for any coastal risk subject to storm surge or flooding from the sea, which is eligible for flood insurance under the National Flood Insurance Program, and which does not have the maximum coverage permitted by such program or the amount of coverage sought from the Association, whichever is less.¹³⁸

Again, this is a nuanced difference from other FAIR plans. Massachusetts' standard might be parsed more as a phrasing that simply says that it will not insure against floods and that it also requires properties to carry federal flood insurance (both of which have analogs in other FAIR plans). However, the Massachusetts

134. See OR. REV. STAT. §§ 735.005–735.115.

135. Specifically, the New Mexico's FAIR plan underwriting standards advise that "outside fire exposure" such as through "brush exposure" should be mitigated. *Reasonable Underwriting Standards*, N.M. F.A.I.R. PLAN, <https://www.nmpropertyinsurance.com/underwriting-guidelines/underwriting-standards> [perma.cc/2BZS-73UP] (last visited Jan. 24, 2025). For its part, the Oregon standard states that "[f]or consideration of coverage in these wildfire areas, the policyholder must take reasonable steps to help reduce their overall exposure." *Underwriting Guidelines*, OREGON FAIR PLAN ASS'N, <https://orfairplan.com/agents/underwriting-guidelines/> [perma.cc/99EM-QXTH] (last visited Jan. 24, 2025).

136. *Reasonable Underwriting Standards*, N.M. F.A.I.R. PLAN, <https://www.nmpropertyinsurance.com/underwriting-guidelines/underwriting-standards> [perma.cc/JDD6-4H89] (last visited Jan. 24, 2025).

137. *Underwriting Guidelines*, *supra* note 132.

138. MASSACHUSETTS PROPERTY INSURANCE UNDERWRITING ASSOCIATION, AMENDED PLAN OF OPERATION OF MASSACHUSETTS PROPERTY INSURANCE UNDERWRITING ASSOCIATION 17 (2024), <https://www.mpiua.com/wp-content/uploads/2024/07/Amended-MPIUA-Plan-of-Operation.pdf> [perma.cc/983G-8Q4A].

characterization of this as a right to decline or cancel coverage (as opposed to a limit on its own coverage) appears significant. It walks back the typical FAIR plan guarantee of coverage regardless of environmental hazards outside of the owner's control.¹³⁹ Moreover, if Massachusetts' FAIR plan indeed requires insured property owners to carry flood insurance, then how could this requirement be enforced other than by Massachusetts cancelling or not renewing FAIR plan coverage for those who fail to comply?

While these observations about the Oregon and Massachusetts policies rest on subtle phrasing differences, they reflect a noteworthy contrast with other FAIR plans that guarantee coverage regardless of "environmental hazards." The Oregon and Massachusetts plans suggest a different standard, seeming to allow cancellation or declination of coverage based on "environmental hazards" beyond the owner's control. Further, even if the Oregon and Massachusetts plans have never actually acted (and may never intend to act) on these non-guarantees, the prospect of a FAIR plan without guaranteed natural disaster coverage makes for a meaningful policy option to consider when comparing models for ILRs (discussed in Part IV).

4. Both Statewide FAIR Plans and Separate "Wind Pool" Plans for Coastal Storm Coverage (Four States)

States in this category have two separate programs for insurers of last resort: a statewide FAIR plan with guaranteed coverage (as discussed above in Section 1) and a separate plan called a "wind pool." Wind pools are designed to ensure that storm-vulnerable coastal locales have wind, hail, and storm coverage that may be unavailable through either private markets or through typical FAIR plans. These coastal wind pool programs have their own associational entity and funding mechanism.¹⁴⁰

Unlike FAIR plans, which tend to offer basic homeowners insurance as well as, sometimes, extended coverage for wind and hail, wind pool plans usually offer *only* wind, hail, and storm coverage, not broader homeowners protection. States have adopted wind pool plans because private insurers and FAIR plans decline to offer such wind, hail, and storm coverage for coastal areas, where the risk of these perils is high and correlated.

Wind pools are funded via a combination of premiums paid by property owners and assessments levied upon insurers in the states. These assessments on insurers are an important characteristic that differentiates wind pools from FAIR plans.¹⁴¹ FAIR plans are typically financed by premiums (often set above private market rates) that cover the cost of losses and the cost of reinsurance. For FAIR

139. The Massachusetts statutes establishing this FAIR plan are silent on whether coverage is guaranteed. The statute states that the Massachusetts FAIR plan "shall provide basic property insurance to eligible applicants who are otherwise unable to obtain such coverage in the voluntary market." Mass. Gen. Laws Part I Title XXII Ch. 175C, § 4 (2023). But it leaves the definition of "eligible applicants" undefined and says nothing about guaranteeing against natural disaster risk.

140. See, e.g., MISSISSIPPI WINDSTORM UNDERWRITING ASSOCIATION, PLAN OF OPERATION (2019), <https://msplans.com/sites/default/files/MWUA/Plan%20of%20Operation%202019%20final%20effective%207-1-19.pdf> [perma.cc/NLP7-4ADX].

141. In some limited instances of shortfall, FAIR plans too might be able to levy broader, statewide assessments. However, the broader opportunity for statewide assessment is a typical and defining feature of wind pool plans.

plans, if the cost of losses exceeds premium reserves, then the primary funding source is reinsurance.¹⁴²

For wind pools, premiums on their own are usually insufficient (or would have to be unaffordably high to be sufficient) to fund the cost of losses and the cost of reinsurance. So, wind pools derive some of their funding—whether to purchase reinsurance or to finance shortfalls—via assessments on insurers. Through this assessment mechanism, wind pool policies are cross-subsidized by residents across the state. Covered wind pool properties pay some of their coastal insurance costs (via premiums), and the rest of the cost is spread across property owners statewide in the form of assessments (sometimes called “insurance premium tax”) imposed on all insurance premiums in the state.¹⁴³ This type of cross subsidization has been criticized for imposing regressive burdens and creating moral hazards, but it is intended to assure the affordability of coastal wind pool insurance policies (discussed further in Part IV).

Additionally, to incentivize private insurers to offer voluntary coastal policies and provide a private alternative to wind pool coverage, some wind pools provide insurers a “credit” (really a discount on their assessments or insurance premium taxes) if they voluntarily provide wind, hail, and storm coverage in coastal areas. So, all insurers (and ultimately all insured property owners) in the state contribute to the wind pool, whether or not they issue policies for coastal areas. But insurers that do issue policies for coastal areas receive a discount on their contributions.¹⁴⁴

In sum, wind pools offer a specialized form of ILR for coastal properties vulnerability to wind, hail, and storm perils. The coverage is limited to coastal areas and to particular wind perils. Unlike FAIR plans, which are typically statewide and funded via premium payments, wind pool plans are funded in part through premiums and in part through statewide assessments.

5. *Coastal Wind Pool Plans Without Statewide FAIR Plan Coverage (Two States)*

States in this category have adopted wind pools, as described in Section 4, as their only form of ILR.¹⁴⁵ These states do not offer statewide FAIR plan coverage. So, while they provide a cross-subsidized ILR to coastal properties, they offer no ILR for properties in noncoastal areas of the state.

6. *Guaranteed Coverage Mandated Above Market Rate (La. Citizens) (One State)*

Louisiana has embraced a variation on the combination of FAIR plan and wind pool policies. It requires its ILRs to set rates above the voluntary market rate.¹⁴⁶ Louisiana’s ILR is called Louisiana Citizens Property Insurance Corporation

142. In some limited instances, FAIR plans may be able to levy broader assessments, but this is not typical.

143. See, e.g., H.R. 1500, 2007 Leg., Reg. Sess. (Miss. 2007).

144. See, e.g., MISSISSIPPI WINDSTORM UNDERWRITING ASSOCIATION, *supra* note 140, at 15–16.

145. See, e.g., *About Us*, S.C. WIND & HAIL UNDERWRITING ASS’N, <https://www.scwind.com/about.html> [perma.cc/Y2T7-M3ML] (last visited Jan. 24, 2025); ALA. INS. UNDERWRITING ASS’N, <https://www.aiua.org/about-aiua> [perma.cc/RH4T-LJ2P] (last visited Jan. 24, 2025).

146. See Nevitt & Pappas, *supra* note 26, at 1652–54. In addition to its insurer of last resort, Louisiana limits private entities from canceling insurance based on natural disaster risk. Louisiana prohibits insurers from “cancel[ing], refus[ing] to renew[,] or increas[ing] the amount of the premium on [a] homeowners policy based solely on a loss caused by an ‘Act of God,’” defined as “an incident

(La. Citizens). Like the FAIR plan and wind pool combinations used in some other coastal states (see Section 4), La. Citizens administers both a statewide FAIR plan and a cross-subsidized wind pool for coastal areas.¹⁴⁷ However, a particularly interesting feature of La. Citizens is that it *requires* its FAIR plan and wind pool premiums to be set above market prices:¹⁴⁸

[F]or both the FAIR and Coastal Plans, La. Citizens is statutorily mandated to charge rates at least 10% above voluntary market rates, and rates are updated yearly to assure that they remain more expensive than their private insurance counterparts. For instance, when La. Citizens updated its personal insurance line rates effective January 1, 2023, it raised FAIR Plan rates by 62.9% and Coastal Plan rates by 65.6%. . . . While rates do not necessarily rise as drastically every year, [the Louisiana policy requires] continued upward adjustment of rates.¹⁴⁹

This La. Citizens rate regulation differs from typical FAIR plans, where private FAIR plan associations set rates according to their business decisions. In many cases the privately set FAIR plan rates are also more expensive than the voluntary market rates, but they are not always so. For instance, in California, FAIR rates are sometimes competitive with voluntary market rates,¹⁵⁰ and the same is true in other states. These typical FAIR plan rates fluctuate depending on the FAIR plan association's actuarial risk analysis, and, in some cases, FAIR plans can be priced similarly to other market rate insurance because the FAIR plans offer lesser coverage than do private market plans.¹⁵¹ La. Citizens rates, though, will always be above market rates, even if La. Citizens plans offer lesser coverage. Consequently, La. Citizens plans are designed to be less affordable.

7. *Guaranteed Coverage Subsidized by the State (Fla. Citizens) (One State).*

Florida too has a distinct variation on ILR structure, named Florida Citizens Property Insurance Corporation (Fla. Citizens). Despite its similarity in name to the La. Citizens program, however, Fla. Citizens is quite different, particularly regarding its commitments around insurance affordability.¹⁵²

Fla. Citizens is actually a government entity that provides insurance policies, and its underwriting approaches have been heavily influenced (and historically varied) based on political choices. As a result, for much of its history Fla. Citizens has offered heavily subsidized insurance policies. For instance, a 2007 Florida law required Fla. Citizens policies to drastically depart from actuarial risk by lowering Fla. Citizens' rates, freezing those rates at the low level, and allowing policyholders to purchase Fla. Citizens policies even when private insurance options would be available.¹⁵³ Current Fla. Citizens policies have attempted to curtail these subsidies and move premiums toward actuarially sound levels, but Fla. Citizens policies

due directly to natural causes and exclusively without human intervention.” This a notable intervention into private underwriting standards. *See id.*

147. *Id.*

148. *Id.*

149. *Id.*

150. *Id.* at 1639–49.

151. *See supra* Section 1.

152. *See* Nevitt & Pappas, *supra* note 26 at 1639–49.

153. *Id.*

remain below (cheaper than) actuarial levels.¹⁵⁴ Moreover, numerous bipartisan proposals in the Florida legislature seek to move Fla. Citizens back toward subsidized insurance.¹⁵⁵ Thus, Fla. Citizens has historically represented an ILR program that seeks not only to offer insurance *availability* but also one that has, for most of its history, been premised on offering insurance *affordability*, sometimes at rates vastly below market.

This history has contributed to Fla. Citizens becoming the largest insurer in the state of Florida. As for its administration and funding, Fla. Citizens offers statewide multi-peril policies that resemble FAIR plan policies (but are not part of the FAIR plan structure), as well as coastal wind policies with funding structures that are currently similar to wind pool policies. As a result, even though Fla. Citizens is currently attempting to reduce subsidies and bring some of its rate in line with actuarial risk pricing, its coastal insurance remains cross subsidized, funded in part by premiums and in part by statewide assessments.

8. Breakdown of States

This Section offers a table breaking down state ILR policies.

No ILR	Mandatory Above Market	FAIR w/o Guarantee	FAIR Guaranteed	FAIR + Wind Pool	Wind Pool w/o FAIR	State Subsidized
Alaska	Louisiana	Massachusetts	California	Mississippi	Alabama	Florida
Arizona		Oregon	Colorado	New York	South Carolina	
Arkansas			Connecticut	North Carolina		
Idaho			Delaware	Texas		
Maine			Georgia			
Minnesota			Hawaii			
Montana			Illinois			
Nebraska			Indiana			
Nevada			Iowa			
New Hampshire			Kansas			
North Dakota			Kentucky			
Oklahoma			Maryland			
South Dakota			Michigan			
Tennessee			Missouri			
Utah			New Jersey			

154. *Id.*

155. *Id.*

Vermont			New Mexico			
Wyoming			Ohio			
			Pennsylvania			
			Rhode Island			
			Virginia			
			Washington			
			West Virginia			
			Wisconsin			

Figure 1: Breakdown of State ILR Policies

B. Expanding Insurance Withdrawal and Pressure to Reform ILRs

The prior Section surveyed ILR programs as they are today. This Section considers how ILR programs might expand in the future. Subsection 1 examines insurance data from the last decade (and beyond) to conclude that, due to insurance unprofitability, there will likely be continued and increasing incentives for private insurance withdrawal. Based on that, Subsection 2 then predicts that an increasing number of states will soon face pressure to respond to these withdrawals by easing insurance rate regulations or adopting/expanding ILR policies. By comparing insurance data and current ILR policies, Subsection 2 forecasts which states that currently have no ILR program may face particular pressures to adopt ILR policies.

1. Insurance Data Showing Unprofitability and Incentives for Future Private Insurance Withdrawal

Insurance data from the last decade suggests a likelihood of additional private insurance withdrawal. Recall that private insurers tend to withdraw coverage when it becomes unprofitable. Well, signs indicate that more insurance markets are becoming unprofitable.

Using data from AM Best (a credit rating agency that specializes in the insurance industry), the New York Times produced the following table, which shows states where homeowners insurance was unprofitable from 2013 through 2023.¹⁵⁶

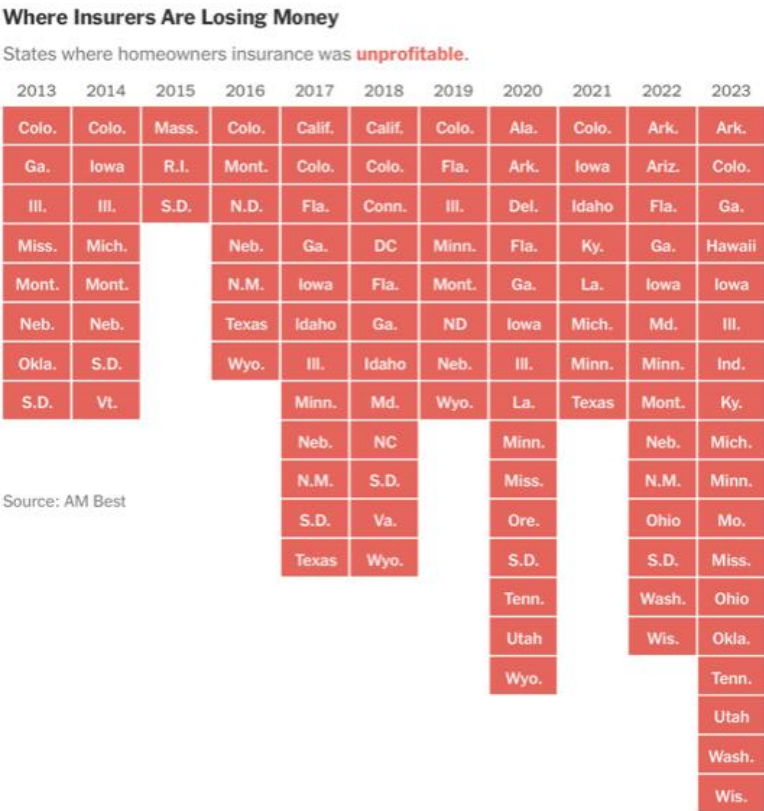


Figure 2: States with Unprofitable Homeowners Insurance Markets (2013-2023)

This table shows numerous instances of unprofitable state insurance markets over the last ten years. It also shows that some states were repeatedly and frequently unprofitable. To help appreciate that last point, the following table takes the same AM Best data presented above and shows, in descending order, the number of years that states were unprofitable in the last decade.

States	Years of Unprofitable Homeowners Insurance (2013-2023)
--------	--

156. See Flavelle, *supra* note 13.

Colorado	8
South Dakota	7
Georgia	6
Illinois	6
Minnesota	6
Nebraska	6
Florida	5
Iowa	5
Montana	5
Wyoming	4
Arkansas	3
Idaho	3
Michigan	3
Mississippi	3
New Mexico	3
Texas	3
California	2
Kentucky	2
Louisiana	2
Maryland	2
Ohio	2
Oklahoma	2
Tennessee	2
Utah	2
Washington	2
Wisconsin	2
Alabama	1
Arizona	1
Connecticut	1
Delaware	1
Hawaii	1
Indiana	1
Massachusetts	1
Missouri	1
North Carolina	1

North Dakota	1
Oregon	1
Rhode Island	1
Vermont	1
Virginia	1
Alaska	0
Kansas	0
Maine	0
Nevada	0
New Hampshire	0
New Jersey	0
New York	0
Pennsylvania	0
South Carolina	0
West Virginia	0

Figure 3: States by Number of Years with Unprofitable Homeowners Insurance Markets (2013-2023)

What the tables above do not show, however, is just *how* unprofitable property insurers were over the last decade. That is, they do not indicate how large the losses were and how those losses in bad years compared to profits in good years. They do not capture, for example, that one or two years of massive losses in Hawaii and Louisiana wiped out eight or nine years of small profits in those states.¹⁵⁷

To more fully appreciate the extent of insurer unprofitability requires examining the ratio of insurers' costs to revenues, which is a profitability metric used so commonly in the insurance industry that it is simply termed the "combined ratio." And combined ratio analysis also shows bleak property insurance profitability over the last decade.¹⁵⁸

According to combined ratio analysis, property insurers in the United States have lost more than they have made over the last decade.¹⁵⁹ Particularly heavy losses have come recently: "The US homeowners insurance industry posted its worst underwriting results in over a decade in 2023," when its combined ratio of losses and expenses to premiums collected surpassed 110 percent (meaning losses were

157. See Christopher Flavelle & Mira Rojanasakul, *The Home Insurance Crunch: See What's Happening in Your State*, N.Y. TIMES (May 13, 2024), <https://www.nytimes.com/interactive/2024/05/13/climate/home-insurance-profit-us-states-weather.html> [perma.cc/SF87-8KWP].

158. *Id.*

159. See Jason Woleben, *US Homeowners Insurers' Net Combined Ratio Surges Past 110%*, S&P GLOBAL (May 21, 2024), <https://www.spglobal.com/marketintelligence/en/news-insights/latest-news-headlines/us-homeowners-insurers-net-combined-ratio-surges-past-110-81711947> [perma.cc/PF7E-SWDG].

more than 110 percent of revenue).¹⁶⁰ While 2023 was a notably bad year, it was consistent with a decade-long trend, in which losses exceeded revenues in five out of ten years, and in which the combined ratio of losses to premiums never dipped below 91.3 percent.¹⁶¹ The figure below illustrates the even broader trend, showing the net combined ratio for United States homeowners insurance policies moving increasingly toward unprofitability over the last twenty years.¹⁶²

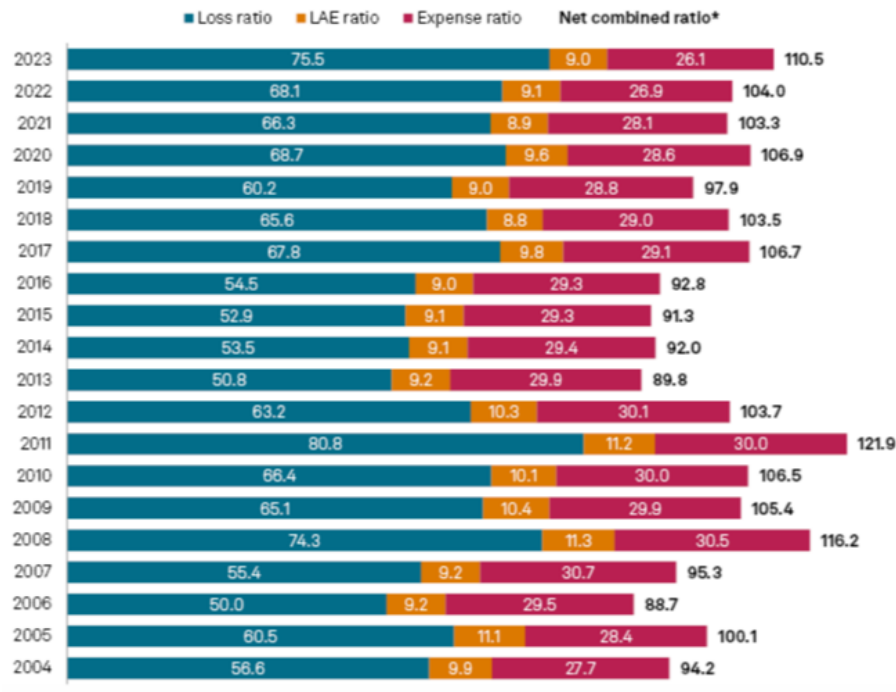


Figure 4: Net Combined Ratio for Homeowners Insurance (2004-2023)

The simple takeaway is that “[n]ationally, over the last decade insurers paid out more in claims than they received in premiums . . . and those losses are increasing.”¹⁶³

Moreover, the combined ratios in individual states show that some state markets have been particularly unprofitable. The following graphic, produced by the New York Times using data from the credit rating agency Moody’s, traces the profitability of state property insurance markets over the last eleven years.¹⁶⁴ The portion excerpted below shows the twenty-one least profitable state markets based on their combined ratios of losses to premiums (with the worst total losses of these

160. *Id.*

161. *Id.*

162. *Id.*

163. Flavelle & Rojanasakul, *supra* note 155.

164. *Id.*

twenty-one states in the top left and the relatively smaller losses in the bottom right).¹⁶⁵

165. *Id.*



Figure 5: Least Profitable State Homeowners Insurance Markets by Combined Ratio (2013-2023)

To state the obvious, this table shows numerous states where the property insurance market has not been profitable. For some of these states, such as

Louisiana, Hawaii, California, and Florida, insurance withdrawal is already a reality. For those that have not yet experienced withdrawal, the prospect is looming.

2. Pressure on States to Respond to Future Insurance Withdrawal

Flagging profitability among private insurers threatens further insurance withdrawals. In turn, states will likely face additional pressures to respond by (1) relaxing insurance rate regulations so that private insurers can seek profitability, and/or (2) providing alternatives to private insurance via ILR programs. It remains to be seen whether regulatory changes will successfully restore profitability and stem insurance withdrawals. But barring a complete and speedy reversal of insurance profitability trends, the importance of ILRs appears poised to grow.

This underscores the broadening significance of state ILR programs. It should also command the attention of states that have limited or nonexistent ILR programs, especially if they have recently experienced nonprofitable property insurance markets. These states may confront particular pressures to update their ILR policies.

This Subsection identifies such states by comparing the insurance profitability data discussed in Subsection one with current state ILR policies. First it examines how state ILR programs match with unprofitable years in the last decade. Then it considers how ILR programs map onto the least profitable states according to combined ratio analysis. From those two datasets, it then identifies which states may be pressed to adopt new ILR programs.

To begin, the following table matches ILR programs with years of unprofitability, in descending order.

States	Insurer of Last Resort	Years of Unprofitable Homeowners Insurance (2013-2023)
Colorado	FAIR guaranteed	8
South Dakota	None	7
Georgia	FAIR guaranteed	6
Illinois	FAIR guaranteed	6
Minnesota	None	6
Nebraska	None	6
Florida	State Subsidized	5
Iowa	FAIR guaranteed	5
Montana	None	5
Wyoming	None	4
Arkansas	None	3
Idaho	None	3

Michigan	FAIR guaranteed	3
Mississippi	FAIR + wind pool	3
New Mexico	FAIR guaranteed	3
Texas	FAIR + wind pool	3
California	FAIR guaranteed	2
Kentucky	FAIR guaranteed	2
Louisiana	Mandatory above market	2
Maryland	FAIR guaranteed	2
Ohio	FAIR guaranteed	2
Oklahoma	None	2
Tennessee	None	2
Utah	None	2
Washington	FAIR guaranteed	2
Wisconsin	FAIR guaranteed	2
Alabama	wind pool no FAIR	1
Arizona	None	1
Connecticut	FAIR guaranteed	1
Delaware	FAIR guaranteed	1
Hawaii	FAIR guaranteed	1
Indiana	FAIR guaranteed	1
Massachusetts	FAIR w/o guarantee	1
Missouri	FAIR guaranteed	1
North Carolina	Fair + wind pool	1
North Dakota	None	1
Oregon	FAIR w/o guarantee	1
Rhode Island	FAIR guaranteed	1
Vermont	None	1
Virginia	FAIR guaranteed	1

Figure 6: States by Years of Unprofitable Insurance Compared with ILR Program

To strengthen the consideration, the next table depicts how ILR programs map onto the least profitable states according to combined ratio analysis (again, in descending order, such that the state with highest net losses is ranked #1).

State	ILR Program	Least Profitable State (based on Combined Ratio 2013-2024)
Louisiana	Mandatory above market	1
Hawaii	FAIR guaranteed	2
Iowa	FAIR guaranteed	3
California	FAIR guaranteed	4
Oregon	FAIR w/o guarantee	5
South Dakota	None	6
Minnesota	none	7
Montana	None	8
Nebraska	None	9
Oklahoma	None	10
Kentucky	FAIR guaranteed	11
Arkansas	None	12
Florida	State Subsidized	13
Wyoming	None	14
Colorado	FAIR guaranteed	15
Massachusetts	FAIR w/o guarantee	16
Wisconsin	FAIR guaranteed	17
North Dakota	None	18
Texas	Fair + wind pool	19
Idaho	None	20
Rhode Island	fair guaranteed	21

Figure 7: Least Profitable States for Homeowners Insurance Compared with ILR Program

The tables above, while not completely identical, show a trend among states struggling for profitability. They show that a consistent group of states with no ILR programs have experienced deeply unprofitable insurance markets over the last decade. These unprofitable states without ILRs include South Dakota, Minnesota, Nebraska, Montana, Wyoming, and Arkansas. Each of these states has been net

negative for insurance profitability over the past decade,¹⁶⁶ and the table below shows their varying degrees of insurance woes.

State	Years of Unprofitable Homeowners Insurance (2013-2023)	Ranking of Least Profitable State (based on Combined Ratio 2013-2024)
South Dakota	7	6th
Minnesota	6	7th
Nebraska	6	9th
Montana	5	8th
Wyoming	4	14th
Arkansas	3	12th

Figure 8: Deeply Unprofitable States with No ILR Program

Additionally, three more states without ILRs, Idaho, Oklahoma, and North Dakota, are teetering on the line of profitability.¹⁶⁷ Over the last decade, property insurance in Idaho and Oklahoma has roughly broken even, and in North Dakota profitability has recently declined.¹⁶⁸ The table below shows their insurance data over the last decade.

State	Years of Unprofitable Homeowners Insurance (2013-2023)	Ranking of Least Profitable State (based on Combined Ratio 2013-2024)
-------	--	---

166. *Id.*
167. *Id.*
168. *Id.*

Idaho	3	20th
Oklahoma	2	10th
North Dakota	1	18th

Figure 9: Marginally Profitable States with No ILR Program

Overall, what this shows is that, of the seventeen total states that have no ILR programs, nine have been unprofitable at least one year in the last decade. Further, all nine are ranked among the twenty least profitable states over that period, and six of them have been considerably unprofitable.

This profitability information suggests that more than half of the states without ILRs (nine of seventeen) may face insurance withdrawal in the near future. With that we can anticipate an inducement to adopt ILR programs. In fact, Colorado's recent experience may show a likely path for these nine states. Colorado had no insurer of last resort prior to May 2023, when it passed a law adopting a FAIR plan. That came after a decade when Colorado homeowner's insurance was unprofitable in eight of ten years and Colorado ranked as the fifteenth least profitable state based on combined ratio. The nine states with no ILRs and questionable profitability may find themselves in situations similar to Colorado's. Their time for ILR adoption may be near.

III. HOW ILR POLICIES FIT (OR DON'T) WITH OTHER STATE CLIMATE POLICIES

Just as responding to the insurance crisis might push some states to adopt ILR programs for the first time, responding to the climate crisis might also drive states to establish or amend ILR programs. As discussed in Part I, state ILR programs may not be widely recognized as climate policies, but, in fact, they represent some of the most significant and impactful state policies regarding climate change.

However, it appears that even the states themselves have not appreciated that their ILR programs are effectively their most potent climate policies. For instance, comparison of states' ILR programs with their other climate policies reveals no discernible coherence. While most states display internal consistency across their obvious climate policies, which tend to reflect steady preferences for either proactive or inactive climate response, there is no trend showing that state ILR programs align with their other climate-oriented policies in any predictable way. This suggests that states have not recognized the momentous practical influence of ILR programs or the opportunity these programs pose for shaping climate adaptation. State ILR programs simply don't align with states' otherwise reliable climate policy preferences.

The most likely explanation for this is oversight and inertia. It appears that most of the twenty-nine states with FAIR plans simply have not revisited their ILR policies since adopting them in the late 1960s. And, similarly, most of the seventeen states without ILR programs do not seem to have reconsidered this choice by modern lights. Thus, a state's ILR program at present does not necessarily reflect that state's priorities regarding climate adaptation or climate policy more broadly. ILR policies have not been attuned to states' climate concerns (or lack thereof).

However, given the gravity of ILR programs for climate adaptation and the strong, bipolar political charge that climate issues hold in different states,¹⁶⁹ it would be no surprise to see states starting to harmonize their ILR policies with their broader climate policy preferences.

This Part unpacks these dynamics between states' ILR programs and their more obvious climate policies. Section A examines how ILR programs compare with other state climate policies. Section B then identifies misalignments that might lead states to reconsider their ILR programs and reconcile them with other climate policy choices.

A. Disconnects Between ILR Programs and Other Climate Policies

To show the disorganization between ILR programs and other climate policies, this Section compares each state's ILR program with its two more obvious climate policies: targeted climate adaptation policy and emission reduction policy. As elaborated below, this analysis finds no patterns of consistency between ILR programs and other climate policies.

Before diving into the comparisons, a quick overview of methodology is warranted. This comparison takes the ILR classifications explained in Part II and juxtaposes them with comprehensive classifications of state climate policies developed in my prior work *The Structure of U.S. Climate Policy*.¹⁷⁰ That article conducted a detailed review of climate policy in the United States, concluding that most meaningful climate policy manifested at the state level. Further, the article closely surveyed state climate policies and found that most represented either "adaptation" policies or "emission reduction" policies. Adopting that article's classifications, this Section compares each state's ILR program with its targeted adaptation policy¹⁷¹ and its emission reduction policy.

The first point of comparison looks at how a state's ILR program compares with its targeted climate adaptation policy. This comparison further relies on analysis from *The Structure of U.S. Climate Policy*, which coded state adaptation policies as reflecting either "active adaptation" strategies, defined as "tak[ing] proactive steps to anticipate and adjust to climate impacts,"¹⁷² or "static strategies" that evidenced no adaptation measures.¹⁷³

The second point of comparison juxtaposes a state's ILR program with its emission regulation policy. Again, per *The Structure of U.S. Climate Policy*, state emission regulations are coded as either "active emission regulation" policies that seek to curb climate-threatening emissions,¹⁷⁴ "emission inaction or anti-regulatory"

169. See Pappas, *supra* note 27, at 384.

170. See *id.*

171. This article uses the term "targeted adaptation policies" in place of the prior article's term "adaptation policies" to distinguish them from the practical adaptation impacts of ILR programs.

172. Active adaptation strategy states were defined as implementing or planning: "[M]easures include creating framework plans that provide vulnerability assessments, appointing leadership teams, and announcing goals and strategies. . . ." Plans such as these can inform localities and offer coordinating resources for preparing local adaptation strategies. Additionally, some state adaptation policies go further by imposing resilient building standards or providing funding for local adaptive practices. *Id.* at 365, 369–370.

173. *Id.* at 369–70.

174. Active Emission Policy states were defined as: "[H]av[ing] adopted all or nearly all of the following emission reduction regulatory policies: cap-and-trade regulations, emission reduction targets,

policies that eschew emission regulations,¹⁷⁵ or “marginal” policies that fall somewhere in between.¹⁷⁶

The following table presents these comparisons.

State	ILR Program	Targeted Climate Adaptation Policy	Emission Reduction Policy
Alaska	None	Active	Inaction/Anti-Regulatory
Arizona	None	Static	Inaction/Anti-Regulatory
Arkansas	None	Static	Inaction/Anti-Regulatory
Idaho	None	Static	Inaction/Anti-Regulatory
Maine	None	Active	Active
Minnesota	None	Active	Marginal
Montana	None	Active	Marginal
Nebraska	None	Static	Inaction/Anti-Regulatory
Nevada	None	Static	Marginal
New Hampshire	None	Active	Active
North Dakota	None	Static	Inaction/Anti-Regulatory

renewable portfolio standards, and zero-emission or low-emission vehicle standards. Most of these states have also participated in lawsuits seeking to spur emission regulation at the federal level. These states’ policies, which all use similar methods, represent the most advanced set of emissions regulations in the United States.” *Id.* at 356–57.

175. Anti-regulatory states were defined as adopting: “[A]nti-regulatory strategies evidenced by not only state abstention from active emission regulation but also by a combination of state laws preempting local emission reduction regulations (such as local efforts to phase out fossil fuel use by banning new natural gas connections), lawsuits challenging other states’ emission regulation efforts, and lawsuits challenging federal emission regulation efforts.” *Id.* at 358. Emission inaction states were defined as “complete or near complete abstention from emission regulation coupled with relatively limited anti-regulatory efforts.” *Id.* at 360.

176. Marginal states were defined as adopting: “[M]arginal strategies that could be considered active emission regulation strategies or emission inactive strategies, depending on how one draws that distinction. . . . These states have all adopted emission reduction targets, and all except Louisiana have adopted renewable portfolio standards. However, one might question the practical impact of such emission reduction targets because many do not have clear, mandatory mechanisms for achieving emission reductions, and because evidence to date suggests that such targets are not frequently met.” *Id.* at 361.

Oklahoma	None	Static	Inaction/Anti-Regulatory
South Dakota	None	Static	Inaction/Anti-Regulatory
Tennessee	None	Static	Inaction/Anti-Regulatory
Utah	None	Static	Inaction/Anti-Regulatory
Vermont	None	Active	Active
Wyoming	None	Static	Inaction/Anti-Regulatory
California	FAIR guaranteed	Active	Active
Colorado	FAIR guaranteed	Active	Marginal
Connecticut	FAIR guaranteed	Active	Active
Delaware	FAIR guaranteed	Active	Active
Georgia	FAIR guaranteed	Active	Inaction/Anti-Regulatory
Hawaii	FAIR guaranteed	Active	Marginal
Illinois	FAIR guaranteed	Static	Marginal
Indiana	FAIR guaranteed	Static	Inaction/Anti-Regulatory
Iowa	FAIR guaranteed	Static	Inaction/Anti-Regulatory
Kansas	FAIR guaranteed	Static	Inaction/Anti-Regulatory
Kentucky	FAIR guaranteed	Static	Inaction/Anti-Regulatory
Maryland	FAIR guaranteed	Active	Active
Michigan	FAIR guaranteed	Active	Marginal
Missouri	FAIR guaranteed	Static	Inaction/Anti-Regulatory
New Jersey	FAIR guaranteed	Active	Active
New Mexico	FAIR guaranteed	Static	Marginal
Ohio	FAIR guaranteed	Static	Inaction/Anti-Regulatory
Pennsylvania	FAIR guaranteed	Active	Marginal
Rhode Island	FAIR guaranteed	Active	Active
Virginia	FAIR guaranteed	Active	Active
Washington	FAIR guaranteed	Active	Active
West Virginia	FAIR guaranteed	Static	Inaction/Anti-Regulatory
Wisconsin	FAIR guaranteed	Active	Marginal

Massachusetts	FAIR w/o guarantee	Active	Active
Oregon	FAIR w/o guarantee	Active	Active
Mississippi	Fair + wind pool	Static	Inaction/Anti-Regulatory
New York	Fair + wind pool	Active	Active
North Carolina	Fair + wind pool	Active	Marginal
Texas	Fair + wind pool	Static	Inaction/Anti-Regulatory
Alabama	wind pool w/o FAIR	Static	Inaction/Anti-Regulatory
South Carolina	wind pool w/o FAIR	Static	Inaction/Anti-Regulatory
Louisiana	Mandatory above market	Static	Marginal
Florida	State Subsidized	Active	Inaction/Anti-Regulatory

Figure 10: State ILR Programs Compared with Other Climate Policies

As noted above, the comparisons in this table show no coherence between ILR programs and other state climate policies. While the table shows a clear pattern between states' approaches to targeted climate adaptation policies and emissions policies, there is no pattern correlating ILR policies with those other climate policies.

To begin unpacking this data, we can establish the baseline that states tend to be internally consistent with their obvious climate policies. This is evident from the relative coherence between each state's targeted climate adaptation policy and its emission reduction policy.¹⁷⁷

The table above shows a clear pattern regarding states' targeted climate adaptation policies and emission regulation policies. States with static adaptation policies mostly adopt emission-inactive or anti-regulatory emission policies. These states demonstrate an internally consistent policy preference for climate inaction. Conversely, states with active adaptation policies tend to have active emission regulation or marginal policies. Again, there is an internal consistency here. Across policy areas, these states favor more intervention and proactivity in their climate policies. Among the fifty states, only Alaska, Florida, and Georgia show a real inconsistency between their active climate adaptation and inactive emission regulation policies.¹⁷⁸

177. *Id.*

178. Alaska, Florida, and Georgia seem to have polar opposite policies for adaptation and emission regulation. They all display active adaptation policies but inaction/anti-regulatory emission policies.

Illinois, Louisiana, Nevada, and New Mexico also show some arguable inconsistencies in their climate policies, but they are not as stark. Each of these states displays static adaptation policies and marginal emission reduction policies. This alignment can reconcile into relative consistency around climate inaction.

Given that almost every state exhibits its own consistent climate policy preference, and given the dominant impact that state ILR programs can have on climate adaptation, one might expect some correlation between a state's ILR program and its other climate change policies. For example, we might expect that states with commitments to proactive climate policies, including active adaptation strategies, would consistently adopt ILR programs that incentivize adaptation and reduce climate hazard risks. Conversely, we might also expect that states with inactive climate policies and static adaptation commitments would have ILR programs that do not incentivize adaptation and that even encourage further development in vulnerable areas. However, state ILR policies reveal no such pattern. Rather, they appear haphazard in relation to states' other climate policies.

For instance, the twenty-five states that are consistent in their preference for climate inaction (i.e., states with static adaptation policies and inaction /anti-regulatory emission policies) are split when it comes to their ILR policies. Eleven such states¹⁷⁹—most of which espouse conservative-leaning, limited-government political preferences—have no ILR program. However, fourteen such states¹⁸⁰—also mostly espousing conservative-leaning, limited-government political preferences—have adopted ILR programs.

On the flip side, the twenty-two states that consistently prefer more proactive climate policies (i.e., states with active adaptation policies and active emission regulation or marginal policies) also split among different ILR approaches (though the split is not as even as that described above). Among these states, five have no ILR,¹⁸¹ and seventeen have some ILR program.¹⁸²

The remaining three states—Alaska, Florida, and Georgia—have climate policies that are internally inconsistent between their targeted adaptation policies and emission policies. These three states are also split regarding ILR programs. Alaska has no ILR whereas Florida has a state subsidized ILR program and Georgia has a FAIR plan.

Overall, there is no discernable pattern between a state's general climate policy preferences and its adoption (or not) of ILR programs. As for states that *have* adopted ILR programs, there is also no clear coherence between a state's climate policy preference and the type of ILR it has adopted. The largest category of ILR programs is FAIR plans with *guaranteed* coverage, adopted by twenty-three states.¹⁸³ Of those twenty-three states, thirteen consistently prefer proactive climate policies,¹⁸⁴ nine consistently prefer inactive climate policies,¹⁸⁵ and one is Georgia, which has inconsistent internal climate policies. The next largest category of ILR programs is FAIR plans *plus* wind pools, adopted in four states. That group of four

179. Arizona, Arkansas, Idaho, Nebraska, Nevada, North Dakota, Oklahoma, South Dakota, Tennessee, Utah, and Wyoming.

180. Alabama, Illinois, Indiana, Iowa, Kansas, Kentucky, Louisiana, Mississippi, Missouri, New Mexico, Ohio, South Carolina, Texas, and West Virginia.

181. Maine, Minnesota, Montana, New Hampshire, and Vermont.

182. California, Colorado, Connecticut, Delaware, Hawaii, Maryland, Massachusetts, Michigan, New Jersey, New York, North Carolina, Oregon, Pennsylvania, Rhode Island, Virginia, Washington, and Wisconsin.

183. See *supra* Part II.

184. California, Colorado, Connecticut, Delaware, Hawaii, Maryland, Michigan, New Jersey, Pennsylvania, Rhode Island, Virginia, Washington, and Wisconsin.

185. Illinois, Indiana, Iowa, Kansas, Kentucky, Missouri, New Mexico, Ohio, and West Virginia.

is also split; two consistently prefer proactive climate policies,¹⁸⁶ and two consistently prefer inactive climate policies.¹⁸⁷ The other types of ILR programs have each been adopted in only one to two states, so efforts to find patterns there seem futile.

From all this analysis, the core takeaway is that ILR programs do not predictably cohere with states' other climate policy preferences. Other variables, like history of urban unrest in the 1960s or coastal geography, likely do more to explain the current variation in ILR policies.

B. Unintentional Misalignment and Possible Revisitation

The ILR and climate policy alignments (or lack thereof) described above seem unintentional. As noted, the disconnects here likely stem from inattention to old ILR programs that have recently become highly influential on climate adaptation. But as this misalignment and its consequences become clearer, and as states see the power of ILR programs to influence climate adaptation, states may revisit ILR policies and adjust them to fit their broader approach to climate issues.

For example, each of the seventeen states that currently have no ILR is essentially adopting a *laissez-faire* approach to insurance availability, thereby letting private markets drive adaptation decisions based on pricing of climate-exacerbated hazard risk. This effectively represents a policy that actively and strongly encourages adaptation.¹⁸⁸ It pushes individuals toward resilience or retreat and does little to protect reliance or affordability. This is not an irrational policy choice, but it is questionable whether all seventeen of these states would intentionally adopt this posture, especially given that these states otherwise split on their climate policy preferences.

A similar observation can be made about the twenty-three states that have adopted FAIR plans with *guaranteed* coverage. This ILR program assures the availability of insurance, regardless of hazard risk. While the insurance it provides may be limited in its coverage and expensive, its guarantee of an insurance policy regardless of a property's climate vulnerability marginally dampens incentives for adaptation in general and retreat in particular.¹⁸⁹ Again, this is not a clearly unreasonable policy, but it is also not clearly aligned with the climate policy preferences of all twenty-three states, which divide between proactive and inactive climate approaches.

So, ironically, while many states have otherwise strong, clear, and consistent climate policy preferences, they are letting their most powerful climate adaptation vehicle steer itself. Or, at least, numerous states have not tailored their ILR policies to match their climate goals. At least not yet. But as climate hazards and insurance withdrawals force ILR policies into the spotlight, some reckoning and realignment may be coming.

186. New York and North Carolina.

187. Mississippi and Texas.

188. See *infra* Part IV.

189. See *infra* Part IV.

CONCLUSION

State ILR programs are the most important policies you've never heard of. Implicating insurance availability, climate change adaptation, and affordable housing, they lie at the center of a crisis trifecta. And yet, they have been largely forgotten since the 1960s. However, current conditions are making it difficult to ignore ILR programs much longer. Whether to confront private insurance withdrawals or to maintain consistent climate policies, states will likely face increasing pressure to adopt or update ILR programs. As they do so, there is an opportunity to leverage the broad reach of ILR programs to effectuate crosscutting state policies around insurance, climate, and housing.

