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ELECTION MEMORANDUM | NOVEMBER 7, 2018

# Rent Control Moving Forward:

California's Proposition 10, the 2018 Midterm Elections and Implications for the Multifamily Housing Industry

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# Summary

The midterm elections are finally behind us. While the greatest change is that the Democratic party gained control of the U.S. House of Representatives, many elections and ballot initiatives at the state level were also of great consequence.

Most notably, California's Proposition 10 ballot initiative seeking to loosen rent control restrictions failed by a significant margin. Based on our ongoing assessment of the political landscape and the results of the November 6 elections, however, several state governments are primed to pursue similar measures to overturn preemptions in the coming year – the likeliest being **Oregon** and **Illinois**, followed by **Washington State** and **Colorado**.

Rent control is nothing short of an existential threat to the multifamily housing industry, posing a greater risk than any other the industry has faced in decades. In the following pages, we provide greater detail on California's Prop 10 outcome along with a deeper dive into some of the states where we expect rent control measures to play out.

“With rent-control activists in states like Illinois, Colorado, and Oregon all pushing similar restrictions, this issue is likely to rear its head again and again in cities and states across the country.”

- CITYLAB, November 7

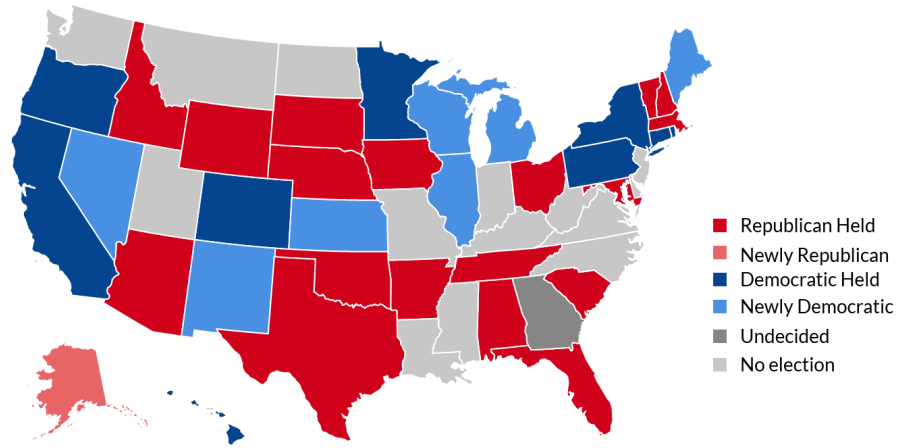
The “blue wave” was not contained to the U.S. House of Representatives. Democrat governors will now lead 23 states, up from 16, with one race still undecided (Georgia). Multiple state legislative bodies also flipped to Democratic control: Colorado (Senate), Connecticut (Senate), Maine (Senate), Minnesota (House), New Hampshire (Senate and House) and New York (Senate). Alaska is the only state with a Republican pick-up, with a changeover in its House chamber.

California’s Proposition 10 ballot initiative was rejected by a margin of 62% to 38%. Prop 10 aimed to repeal the Costa Hawkins Rental Housing Act, a state law that currently restricts the scope of rent control policies. The measure threatened to usher in new and aggressive rent control regulations.

Though the California fight was won, the multifamily housing industry is still at risk of rent control measures in other parts of the country, particularly given the election outcomes. Many localities are also struggling with decreasing housing affordability, especially for renters. As they search for solutions, they are increasingly seeing rent control as a potential easy fix. Among high-threat states:

- In **Colorado**, Democrats picked up control of the General Assembly and now lead both chambers of the legislature as well as the governor’s office. State officials have signaled that they will focus on affordable housing in 2019, one of the primary challenges facing this rapidly growing state. While state and municipal leaders have launched innovative programs to address the cost of housing, activist groups in Colorado are aggressively pushing for rent control.
- **Illinois** also moved to a Democratic trifecta, with J.B. Pritzker’s defeat of Republican incumbent Bruce Rauner to assume the governor’s office. Pritzker has expressed support for lifting of rent control preemption, and state legislators have already begun to hold hearings on rent control measures they intend to introduce in 2019. Elections are not over in Illinois, though, as Chicago gears up for a spring 2019 mayor’s race and city council elections where housing affordability is sure to be a contentious issue.
- In **Oregon**, Democrats built on their majority in the state legislature and retained control of the governor’s office. Rent control has been a hot-button issue throughout the state. In 2017 legislative session, the State House of Representatives passed a measure to repeal preemption (the bill did not make it through the Senate). This election season, one Democratic incumbent lost his primary, due in large part to his position against rent control.
- Both chambers of the **Washington** state legislature as well as the governor’s office are controlled by Democrats. For the first time since 1981, preemption repeal bills were introduced in the State House and the Senate in 2018. Though the measures did not move past the hearing stage, housing affordability remains a major challenge in the state and lawmakers are expected to make another push to end preemption. Furthermore, the Seattle City Council has adopted resolutions urging the state legislature to repeal preemption and will continue its very vocal efforts to position rent control as a viable solution.

2018 ELECTION OUTCOMES: GOVERNOR



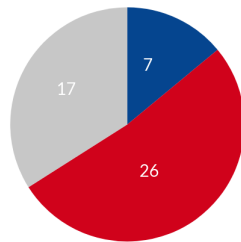
GOVERNORS: 2018 VS. 2019

	2018	2019
Republican	33	26
Democratic	16	23
Independent	1	0

\*Georgia gubernatorial election result TBD

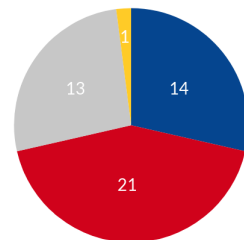
STATE TRIFECTAS

2018 State Control



■ Democrats ■ Republicans  
■ Split

2019 State Control



■ Democrats ■ Republicans  
■ Split ■ Undecided

## Proposition 10

California voters soundly defeated Proposition 10 by a 20-point margin. The measure would have repealed the Costa-Hawkins Rental Housing Act, and, in doing so, allowed municipalities to create extreme forms of rent control – including applying price caps to new construction and setting the price of an apartment forever. The defeat of Proposition 10 was a critical, and hard-earned, victory for the multifamily industry. Had it passed, thousands of apartment homes would have been subject to rent control – upending business strategies, worsening the very real housing affordability challenges Californians face and undercutting the ability of the industry to provide much-needed housing.

However, this victory was not cheaply won. Indeed, it came at an extreme cost. The ballot measure was one of the most expensive in history, exceeding \$100 million in total spending. More than 3,000 industry donors contributed \$75 million to help defeat the measure. Firms and individuals from across the sector and at all levels understood the severity of the threat we faced and did their part when asked.

The cost was not just financial. The industry was dealt a significant reputational blow. The entire “Yes” campaign – which enjoyed \$25+ million in support with nearly all of it from AIDS Healthcare Foundation CEO Michael Weinstein – was designed to viciously attack landlords and blame the industry as the sole reason for the housing affordability crisis. Various polls today show that a plurality of Californians blame developers, landlords or a lack of rent control as the top reason for the crisis.

While the margin of victory over Proposition 10 may give pause to any future ballot measure attempts on rent control in California, Weinstein has already said he plans to push for another ballot initiative in 2020 – a presidential election year being more favorable to a pro-rent control vote. Moreover, Weinstein has already spent more than \$80 million on losing ballot initiatives, suggesting that the likelihood of success may not be his only motivation.

That being said, the limits on rent control provided by Costa-Hawkins remains intact: no rent control on any single-family home or condominium, no rent control on apartments built after February 1995 and no vacancy control. However, municipalities can still expand rent control that conforms to those limits. Initiatives in National City (Measure W) and Santa Cruz (Measure M) were designed to create new rent control regulatory regimes. Both of those measures were also defeated. However, a Sacramento ballot measure has already qualified for the 2020 ballot.

## Governor’s Race

Regarding the state-level races, Democrats maintained control of the governor’s office and both legislative chambers. Gavin Newsom (D) comfortably won the gubernatorial race over his Republican opponent John Cox by double-digits.

Housing was a significant topic in the gubernatorial race, and Newsom proposed an aggressive target of 3.5 million new housing units by 2025. In his housing platform, he offered numerous supply-side policies long-supported by the industry, such as regulatory streamlining and investing in affordable housing. Moreover, he notes that “cities have a perverse incentive not to develop housing” and proposed revamping the tax system “...to financially reward cities that produce housing and punish those that fail.”

While Newsom supports rent control, he broke with his party and opposed Proposition 10, citing concerns about a chilling effect on housing production in the state. With the defeat of Proposition 10, Newsom will almost certainly look for a compromise or “fix” for Costa-Hawkins as one of his first acts as Governor – potentially even pursuing this during the transition period. Similarly, the industry is motivated to find a permanent solution to keep future rent control measures off the ballot.

#### What It Means for Housing

Among potential next steps on rent control, the least likely option would involve a legislative repeal of Costa-Hawkins. A legislative effort failed to garner enough votes to leave committee in January 2018, and the defeat of Proposition 10 makes this path unlikely going forward.

Another approach put forth by the Turner Center at UC Berkley, Finding Common Ground on Rent Control, included tax incentives for affordable housing combined with an “anti-price gouging” cap on rent increases to apply for all residential housing, regardless of age or type of structure. The cap on rent increases would be Consumer Price Index (CPI) plus 5%, to be no more than 10% annually.

The proposal attempts to balance flexibility for multifamily firms while also offering certainty for residents on a year-to-year basis – assuming it takes further rent control fights off the table. Conversely, “anti-price gouging” could easily be the slippery slope into tighter rent control measures. For example, rent control in Washington, D.C., is similarly structured to the Turner Center proposal as CPI plus 2% to be no more than 10% (though the D.C. ordinance only applies to older multifamily buildings). In addition, history has shown that caps only get tighter over time. San Francisco started at 7% and is today at only 60% of CPI, 1.6%.

The tenant advocate proponents of Proposition 10 were not supportive of the proposal – in part because it potentially undermined the repeal effort. The California Apartment Association does support the price cap, though the industry is mixed overall on the proposal.

Another option could be a simple “fix” to Costa-Hawkins to allow more multifamily units to fall under rent control. The easiest approach politically would make rent control apply to all multifamily buildings of a certain age (e.g., 20 years or older), instead of the cutoff being February 1995 in the current law. Given the relatively small changes in this approach, it remains an open question as to whether a “fix” would serve as a long-term solution.

Wherever the debate goes on housing in California, the nation will pay close attention – if not follow. Efforts to address the lack of supply, like CA State Senator Scott Weiner’s up-zoning legislation, drew national attention (and Weiner has said he plans to reintroduce a similar version in 2019). Moreover, Proposition 10 put a massive spotlight on rent control. California will most likely continue to drive the national conversation on housing policy through 2019.

# Colorado

The 2018 midterm elections gave Colorado Democrats “trifecta” control of the state government, reflective of the state leaning more democratic. The Democrats will hold all of the power when the Seventy-second General Assembly convenes on January 4, 2019. The party regained control of the Senate and maintained control of the House and the Governor’s office. Democrats also won the state’s attorney general, secretary of state and treasurer’s offices. The last time Democrats controlled all statewide constitutional offices in Colorado was in 1948.

Colorado generally has a high voter turnout. Unaffiliated Colorado voters turned in more ballots than Democratic or Republican voters, an unprecedented development in the state.

Colorado voters said no to almost every ballot question, including statewide tax increases for schools and transportation projects and new restrictions on oil and gas.

## Governor’s Race

U.S. Representative Jared Polis (D) defeated Republican candidate Walker Stapleton by a margin of 51.6% to 45%. Polis will replace Democrat John Hickenlooper, who was term-limited.

Although Polis did not make any specific comments concerning rent control on the campaign trail, he was extremely vocal on the need for the state government to address affordable housing in Colorado.

## State Senate

The Colorado State Senate is one of eight state legislative chambers across the country which flipped from Republican to Democratic control. The Democrats picked up three Senate seats and now hold 19 seats to 16 held by Republicans.

All five Senate seats that were seen as highly contested and key to control of the Senate went to Democrats.

Sen. Leroy Garcia (D) is the odds-on favorite to become the next Senate President and Sen. Rachel Zenzinger is likely to be the next Senate Majority Leader when Democrats hold leadership elections on Thursday.

## State House of Representatives

The Democratic party expanded its control of the House, picking up two additional seats. The party now holds 38 seats to 27 held by Republicans.

Of note, House Assistant Minority Leader Cole Wist (R) was defeated. Rep. KC Becker (D), who has emphasized affordable housing issues, is expected to be the next Speaker of the House.

## What It Means for Housing

Throughout the campaign season, many candidates, including Gov.-Elect Polis, addressed issues broadly relating to affordability and the overall cost of living in Colorado, including housing. The power now all falls to the Democrats. However, it is important to note that many Colorado Democrats are business-focused, including Gov.-Elect Polis, who started two highly successful businesses (ProFlowers and Blue Mountain Arts).

Democratic dominance of Illinois politics took deeper root Tuesday in an election that saw Republicans ousted from the governor's office to gain full control of the state government. While President Trump's battle with national Democrats was a factor down ballot, the statewide races focused more on the four-year struggle between Republican Gov. Bruce Rauner and Democratic House Speaker Michael Madigan. Rauner's arrival four years ago energized the state GOP, but Rauner struggled to satisfy his conservative base.

Democrats, meanwhile, benefited from a growing progressive movement based in Chicago as well as by tens of millions of dollars in campaign funds from Democratic governor candidate J.B. Pritzker. Chicago elections officials said voter turnout was more than 55 percent, the highest midterm turnout in decades in the city, and some pointed to increased activism by millennial voters.

The result was Democratic control of all state constitutional offices and the Legislature.

In addition, three non-binding referenda related to housing on the ballots in Chicago's 35<sup>th</sup>, 46<sup>th</sup> and 49<sup>th</sup> wards each passed. This is the second election with similar non-binding resolutions.

- 35<sup>th</sup> Ward: *Should the State of Illinois be able to regulate rents to address rising rents, unjust evictions and gentrification in our communities?*
  - Yes: 71.59% (8,649)
  - No: 28.41 % (3,432)
- 46<sup>th</sup> Ward: *Should the State of Illinois be able to regulate rents to address rising rents, unjust evictions and gentrification in our communities?*
  - Yes: 70.62% (14,632)
  - No: 29.38% (6,088)
- 49<sup>th</sup> Ward: *Shall the State of Illinois lift the ban on rent control?*
  - Yes: 66% (10,985)
  - No: 34% (5,658)

While transition plans begin in earnest at the state capitol in Springfield, many eyes are immediately turning to the wide-open Chicago mayor's race. Nearly 20 candidates have declared in advance of the Nov. 26 filing deadline. The Feb. 26, 2019, election is likely to lead to an April run-off between the top two contenders.

### Governor's Race

J.B. Pritzker (D-Chicago) defeated incumbent Gov. Bruce Rauner (R-Winnetka) 54% to 39.3%. Pritzker's election, which gives Democrats control of the executive branch as well as both legislative chambers, is an endorsement of his progressive stances (including a \$15 minimum wage, legalizing marijuana, pro LGBTQ rights and expanding health care) and a rebuke of Gov. Rauner's term, which included a nearly two-year budget standoff. Gov.-Elect Pritzker publicly expressed support for repealing the Rent Control Preemption Act, saying, "We have to end the moratorium on rent control



around the state so that we can limit the gentrification that's been going on across Chicago and the other parts of the state.”

### State Senate

With two races still uncalled, Democrats picked up one seat in the Senate, increasing their supermajority to 38-19. The Democrats now have a veto-proof majority in the legislature.

Senate leadership is expected to stay the same, with Senate President John Cullerton (D-Chicago) and Minority Leader Bill Brady (R-Bloomington) being re-elected, both running unopposed. Majority Leader James Clayborne (D-East St. Louis) did not seek re-election. A new Senate Majority Leader will be picked when the new legislature takes office in January.

Sen. Mattie Hunter (D-Chicago), chair of the Senate’s Special Committee on Housing and advocate to lift rent control preemption, was re-elected, running unopposed. Sen. Martin Sandoval (D-Chicago), who has introduced legislation to repeal preemption, also was re-elected, running unopposed. Sen. Daniel Biss (D-Evanston), who sponsored preemption repeal legislation, did not run for re-election after choosing to run in the Democratic primary for governor.

### State House of Representatives

With two races still uncalled, Democrats picked up four seats in the House, creating a supermajority and increasing their lead to 71-45. The Democrats now have a veto-proof majority in the chamber.

House leadership is expected to stay the same, with Speaker Michael Madigan (D-Chicago) running unopposed and Minority Leader Jim Durkin (R-Western Springs) winning re-election. Majority Leader Barbara Flynn Curie (D-Chicago) did not seek re-election. A new House Majority Leader will be picked when the new legislature takes office in January.

Rep. Will Guzzardi (D-Chicago), a vocal advocate for repeal who has introduced legislation to repeal preemption, was re-elected, running unopposed.

### Other Races

State Sen. Kwame Raoul (D-Chicago) won the race for Illinois Attorney General, filling the seat vacated by Lisa Madigan. In 2018, he co-sponsored SB3512, which would establish elected, tenant-majority boards at the county levels. Sen. Raoul’s senate seat was not on the ballot in 2018, so the seat will be filled by the Democratic Party organization within 30 days of the vacancy.

### What It Means for Housing

Progressive voices in the state, particularly in Chicago, will see the election of Pritzker as a victory for progressive causes and an opportunity to legislatively address preemption. Gov.-Elect Pritzker is expected to initially focus on legislation that will raise revenue, including a gaming bill and marijuana legalization.

Going into election day, Democrats held the Governor's office and had sizable majorities in both chambers of the Oregon State Legislature. The statewide election outcomes people were focused on were the results of the gubernatorial campaign and whether Democrats would be able to expand their majorities to meet supermajority status. Public sector unions (OEA, SEIU, AFSCME) were by far the largest financial donors toward the goal of re-electing the Governor and expanding Democrat majorities.

Through shifting demographics and the implementation of a "motor voter" law in 2014, Oregon Democrats now enjoy a 260,000-voter registration advantage statewide – a record. Over 200,000 of this advantage comes out of Multnomah County (City of Portland), making the Democratic "Get Out the Vote" operation condensed and highly efficient.

Democrats harnessed this advantage to their benefit to influence statewide candidate and initiative campaigns, and the public sector unions delivered the necessary resources to flip seats outside of the metro region. Blue Oregon has gotten bluer.

#### Governor's Race

Incumbent Governor Kate Brown (D) won re-election and will be enter her final, four-year term. She defeated State Rep. Knute Buehler (R) by a margin of 49% to 45%.

The outcome did not come as a surprise. Although Buehler was considered a strong, well-funded challenger, the underlying political environment is too good for Democrats in Oregon. Brown held an historic registration advantage, enjoyed a high degree of party loyalty and ran in a favorable cycle for Democrats nationally.

Governor Brown supports ending no-cause evictions and is in favor of lifting the statewide preemption on rent control.

#### State Senate

Democrats won a supermajority in the State Senate. There are currently 17 Democrats and 13 Republicans; the new Senate will have 18 Democrats and 12 Republicans. An open seat in southern Oregon was won by Democrat Jeff Golden, who ran as a very conventional liberal. He will be a reliable vote for Senate leadership.

All of the existing Democrat and Republican elected leaders in the Senate were either re-elected or mid-cycle. Therefore, no changes are anticipated. The current President is Sen. Peter Courtney (D-Salem) and Republican Leader is Sen. Jackie Winters (R-Salem).

Rep. Shemia Fagan (D-Clackamas County) soundly defeated incumbent Democratic Sen. Rod Monroe (D-Clackamas County) earlier this year in a primary dominated by the issue of rent control. Monroe was an opponent of rent control legislation in 2018, and Fagan focused on that issue in defeating him 62% to 20% in the May primary. She easily won the general election and will be a new threat in the Senate.

#### State House of Representatives

Democrats picked up three seats to give the party a supermajority in the Oregon House. There are currently 35 Democrats and 25 Republicans; the new House will have 38 Democrats and 22 Republicans.

All of the existing Democrat and Republican elected leaders in the House were re-elected. No changes are anticipated. Rep. Tina Kotek (D-Portland) will be Speaker and Rep. Mike McLane (R-Crook County) will be Republican Leader. Speaker Kotek is the lead sponsor of the bill to eliminate the statewide pre-emption on rent control.

The biggest threat to rent control is Speaker Kotek’s personal commitment to see her bill to eliminate pre-emption passed and signed into law. Her aim will be aided by the additional three House votes and the Senate exchange of Fagan for Monroe.

#### What It Means for Housing

In the most closely-watched race in Portland, Jo Ann Hardesty beat Loretta Smith for Portland City Council by a wide margin – 63% to 37%. Hardesty ran as an unabashed supporter of rent control, while Smith attracted a great deal of developer support for her more moderate position on housing. The Portland City Council is now more likely to aggressively pursue rent control since Hardesty replaces a housing moderate (Councilor Dan Saltzman) and has the support of two other members on the five-person council.

A Portland metro region ballot initiative passed by 59% to 41%. It will result in over \$650 million in new bond capacity to finance up to 3900 affordable housing units around the Portland area.

Rent control is a top-tier issue at the state level and in Portland, and Democrats now have the votes to move it.

# Washington

Washington election laws are among the most permissive in the country as the vote is conducted entirely by mail-in and ballots are eligible to be counted so long as they are postmarked by Election Day. The counting of ballots can continue for another three weeks with county administrators required to certify the election by November 27<sup>th</sup>.

Prior to the election, Democrats controlled both legislative chambers as well as the governor's office. They maintained their "trifecta" control. While many ballots remain outstanding, Democrats are expected to increase their control of both chambers, from a one-seat majority in the Senate to five-seat majority and from a two-seat majority in the House to fourteen-seat majority.

## Governor's Race

There was no race for governor this cycle. Democratic Gov. Jay Inslee will be up for re-election in 2020.

## State Senate

Though some votes remain to be counted, it appears the Democrats will hold a 27-22 seat majority in the State Senate.

Democrats expanded their majority by two votes. In the 26<sup>th</sup> District (Gig Harbor, Port Orchard), Democrat Emily Randall held a 567-vote lead over Republican Marty McClendon in the race to succeed retiring GOP Senator Jan Angel. In the 30<sup>th</sup> District (Federal Way), incumbent GOP Senator Mark Miloscia was trailing Democrat Claire Wilson 53% to 47%.

## State House of Representatives

If initial tallies hold, Democrats will gain a 56-42 seat majority in the State House. Republican incumbents trailed in five races, with Representatives Paul Graves, Dave Hayes, Vincent Buys, Mark Harmsworth and Mark Hargrove behind their Democratic challengers. In an open seat in the 5<sup>th</sup> District (Issaquah, North Bend), Democrat Bill Ramos held a lead over former Republican Rep. Chad Magendanz to fill the seat being vacated by GOP Rep. Jay Rodne.

## What It Means for Housing

Every legislative sponsor of 2018's rent control bills was reelected, save for Sen. Chase who was defeated in a primary.

Housing affordability was highlighted as an issue in a handful of competitive races, most notably that between Rep. Dave Hayes (R) and challenger Dave Paul (D). Paul appears headed to victory as of this writing. Like some other Republicans, Hayes advocated for changes to parts of the state's Growth Management Act and cuts in other regulations to make it easier to get new homes built. For his part, Paul wants to provide more financial incentives to encourage building, provide more

training for local officials in permitting processes and create more partnerships between government and builders to determine where new housing stock could go within towns.

Elsewhere, apparent victors have stumped for changes to the State's condo liability laws, increased money for affordable housing, make it easier to identify buildable land and fund low-income housing programs.

# Other States

Beyond the four states, there are rumblings in many other parts of the country. The following are additional states that NMHC is closely monitoring.

**Massachusetts**, one of the bluest states in the country, re-elected Republican Governor Charlie Baker in a landslide victory, 66.6% to 33.4% over Democratic opponent Jay Gonzalez. Gov. Baker, one of the nation's most popular governors, pledged to work on increasing affordable housing during his campaign – a promise seen to appeal to the increasingly left-of-center voter base in the state.

In **Michigan**, Democrats bounced back after President Trump's 2016 victory in the state by flipping the governorship blue. The former Democratic leader of the Michigan Senate, Gretchen Whitmer, beat out Attorney General Bill Schuette, a Republican endorsed by Trump, 53% to 44%. One of the main pillars of Whitmer's campaign platform was to fight urban poverty that included plans to tackle affordable housing.

Following Tuesday's elections, **Minnesota's** state legislature is reportedly the only state in the entire U.S. with a divided legislature. The State House went to the Democrats on Tuesday as the party gained some 18 seats in the chamber. The State Senate remains Republican-controlled. Democrats retained the governorship as Rep. Tim Walz left Congress and ran on a platform that included moving toward single-payer health care. Gov.-Elect Walz beat out State Senator Jeff Johnson 54% to 42%.

**Wisconsin** voters unseated Republican Governor and former presidential hopeful Scott Walker in his bid for a third term. State Schools Superintendent Tony Evers etched out a narrow victory for the governorship, 49.6% to 48.4%. The state legislature remains in Republican control.

**New York** will become a Democratic trifecta after the party took back control of the State Senate. Democrats had numerically held the majority already, but for several years, there had been a group of Democratic senators who had broken off to caucus together and team up with Republicans. Democratic Gov. Andrew Cuomo won a third term, defeating the Republican candidate Marcus Molinaro 59% to 36.8%. Gov. Cuomo vowed to continue to battle housing affordability throughout the state.

# Conclusion

In light of the threats ahead of us, the National Multifamily Housing Council together with the National Apartment Association and other partners are beginning a new, wide-ranging initiative across the country to surface real solutions to address housing affordability challenges rather than flawed rent control policies.

Beyond defeating short-sighted and overly aggressive rent control initiatives, the multifamily housing industry needs to be front and center in the exploration of solutions to the affordability crisis. This crisis is multilayered and in no small way attributable to decades of under building, restrictive regulations, NIMBYism and the high costs of land and construction. But the bottom line is this: It's real and people are suffering.

NMHC is dedicated to identifying realistic and meaningful solutions and advocating for their adoption. For more information, visit <http://www.nmhc.org/rentcontrol>.