

No. 23-807

IN THE
Supreme Court of the United States

EL PAPEL, LLC, *et al.*,

Petitioners,

v.

CITY OF SEATTLE, WASHINGTON, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED
STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

**RENTAL HOUSING ASSOCIATION OF
WASHINGTON AMICUS BRIEF IN
SUPPORT OF PETITIONERS**

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A. INTEREST OF *AMICUS CURIAE*¹

Amicus curiae Rental Housing Association of Washington (“RHA”) is a 5,000 plus member non-profit organization of rental housing owners (single family homes to multi-family communities) in Washington. Its objectives are to oversee the general welfare of the rental housing industry, lead advocacy efforts, provide continuous development of skills and knowledge, and assist members to provide appropriate services to the renting public.

RHA represents the interests of rental housing owners to state and local legislative bodies, news media and the general public. RHA is actively involved in the Legislature and local governments on any legislation affecting landlords (as it was on FIT before the Seattle City Council). Its staff studies the regular meeting agendas of the local governments, meets with city and county council members, and reports to its board about any issues which affect the local community. It is also involved in educating and encouraging member involvement on issues affecting the rental housing industry. RHA offers educational programs which enhance rental property owners’ knowledge and provides different fora for knowledge sharing and social interaction. RHA also offers products and services rental property owners need to be successful, while encouraging the highest standards of ethics and integrity for its members. RHA promotes the value of the rental housing industry to the community and

1. Pursuant to Rule 37, counsel for *amicus* affirm that no counsel for any party authored this brief in whole or part, and no person or entity, other than *amicus*, their members, or counsel, made any monetary contribution to its preparation or submission. All parties received timely notice of *amicus*’ intention to file.

educates renters about the process of becoming a tenant and being a good tenant.

RHA, or its predecessor, has also appeared as an *amicus curiae* in numerous Federal and Washington cases.²

The City of Seattle’s (“City”) eviction moratorium order was in many ways more expansive in its prohibition on evictions than was true under Washington State law as discussed in *Jevons v. Inslee*, 2023 WL 5031498 (9th Circuit 2023), *cert. denied*, 2023 8531950 (2023) or *Gonzalez v. Inlsee*, 2 Wn.2d 280, 535 P.3d 864 (2023). It deprived landlords of any viable means of evicting tenants who failed to pay rent or held over in violation of the terms of a tenancy. Tenants simply stopped paying rent. By government fiat, Seattle landlords were required to bear the brunt of the Covid-19 pandemic’s effect on housing. Those landlords were not fully compensated by public programs for their losses.

As argued by the petitioners El Papel and Berman 2, LLC, the City effectuated a physical taking of their property – impacting their rights to possess property and excluded others from it – meriting review by this Court.

2. See, e.g., *Yim v. City of Seattle*, 63 F.4th 783 (9th Cir. 2023); *Yim v. City of Seattle*, 194 Wn.2d 651, 451 P.3d 675 (2019); *Faciszewski v. Brown*, 187 Wn.2d 380, 386 P.3d 711 (2016); *Segura v. Cabrera*, 184 Wn.2d 587, 362 P.3d 1278 (2015); *Cary v. Mason County*, 173 Wn.2d 697, 272 P.3d 194 (2012); *City of Pasco v. Shaw*, 161 Wn.2d 450, 166 P.3d 1157 (2007); *Arborwood Idaho, LLC v. City of Kennewick*, 151 Wn.2d 359, 89 P.3d 217 (2004).

B. INTRODUCTION AND SUMMARY OF ARGUMENT

Certiorari is warranted in this important case involving the just compensation clause and the constitutional rights of private property owners which must not be ignored, even during a pandemic. In justifying broad eviction moratoria that intruded property owners' fundamental right to exclude persons from their property, the Ninth Circuit misapplied precedent and glossed over the severe financial impact of its decision. *Amicus* RHA agrees with and adopts the arguments presented by Petitioners in this matter. And RHA provides this brief in support of the petition for review to further highlight the Ninth Circuit's legal error in expanding inapplicable precedent, namely *Yee v. Escondido*, 503 U.S. 519 (1992). And to highlight the real-world impact the decision has had on private property owners, including RHA's members. *Certiorari* review is warranted.

C. ARGUMENT

The petition for writ of *certiorari* filed by Petitioners El Papel, LLC and Berman 2, LLC does an excellent job of articulating why this case meets the criteria for review in Rule 10. In particular, the Ninth Circuit decision in this case is fully at odds with this Court's physical takings jurisprudence in cases like *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063 (2021) and *Alabama Association of Realtors v. Department of Health and Human Services*, 141 S. Ct. 2485 (2021). Moreover, the Ninth Circuit's position is contrary to that of the Eighth Circuit in *Heights Apartments LLC v. Walz*, 30 F.4th 720 (8th Cir. 2022).

RHA will not repeat the legal arguments advanced by petitioners but will discuss an important facet of this Court's decision in *Yee v. Escondido*, 503 U.S. 519 (1992) that bears upon this Court's analysis, and it will discuss the real world financial impacts of the Ninth Circuit's decision on RHA's landlord's members.

(1) **Yee's Analysis Must Be Seen in Proper Context**

As noted in the petition at 11-21, the Ninth Circuit's decision is predicated upon an improper expansion of this Court's actual decision in *Yee*, a case that arose from a challenge to a mobile home landlord-tenant ordinance in Escondido, California.

Unfortunately, courts since *Yee* have failed to recognize that the important factual anchor to that case – mobile home tenancies are unique and present serious problems for state and local decision-makers. Indeed, in *Manufactured Housing Communities of Washington v. State*, 142 Wn.2d 347, 13 P.3d 183 (2000), *abrogated on other grounds*, *Yim v. City of Seattle*, 194 Wn.2d 651, 451 P.3d 675 (2019), the Washington Supreme Court invalidated a statute on independent state constitutional grounds that purported to afford a right of first refusal to mobile home park tenants to buy a mobile home park where they lived if the owner decided to sell it. Critical to the present analysis, a dissenting justice described the factual context of mobile home park tenancies, noting that "[m]obile homes are not mobile." 142 Wn.2d at 393 (Talmadge, J. dissenting)³ and that the relocation of such

3. See, James Milton Brown, Molly Sellman, *Manufactured Housing: The Invalidity of the 'Mobility' Standard*, 19 Urb. Law 367 (1987).

“mobile” homes is simply not feasible, citing at 393-94, a law review article that stated:

A home owner owns the mobile home, but only rents the land on which it sits. Closure and conversion of a mobile home park force the owner either to move, or to abandon what may be his most valuable equity investment, a mobile home, to the developer’s bulldozer. Displacement from a mobile home park can “mean economic ruin for a mobile home owner.”

Karl Manheim, *Tenant Eviction Protection and the Takings Clause*, 1989 Wis. L. Rev. 925, 956 n.179 (1989). The bulk of mobile home tenants are elderly and low income. *Id.* at 394.

Critically, there are simply very few pads for mobile home tenants on which to place their homes; there is no real market for mobile home rentals:

Some towns exclude mobile homes altogether; others limit how long the homes can stay in town. Most frequently, municipalities confine mobile homes to privately-owned mobile home parks and restrict the number of parks permitted in the town. Consequently, there is a major shortage of space for mobile homes. Thus the owner who needs to rent a lot for his mobile home has no choice but to enter the “park owner’s market” in which the demand for space far exceeds the supply of available lots.

Thomas G. Moukawsher, *Mobile Home Parks and Connecticut's Regulatory Scheme: A Takings Analysis*, 17 Conn. L. Rev. 811, 814-15 (1985) (footnotes omitted).

Abuses of tenants by park owners abound in the mobile home marketplace, including exorbitant fees. *Id.* at 815. *See also*, *Cider Barrell Mobile Home Court v. Eader*, 414 A.2d 1246, 1248 (Md. 1980) (discussing problems of mobile home ownership); *Green Valley Mobile Home Park v. Mulvaney*, 918 P.2d 1317, 1320-21 (N.M. 1996) (noting mobile home tenants' harm at whim of landlords). This has invited policy makers, state and local, to act, as did Escondido officials.

No such similarity restricted market is present in most communities as to rental housing generally. Typical residential tenants do not have an ownership interest in the dwelling in which they occupy. Instead, the relationship between the landlords and tenants impacted by local eviction moratoria is contractual, the landlord agreeing to give a tenant the right to occupy the dwelling they own only in exchange for rent. If the city, state, or federal government wishes to supersede that agreement and take from the landowner the right to exclude a tenant who fails to pay rent, the takings clause demands just compensation. “[E]ven in a pandemic, the Constitution cannot be put away and forgotten.” *Roman Catholic Diocese of Brooklyn v. Cuomo*, 141 S. Ct. 63, 68 (2020) (*per curiam*).

The unique circumstances of the mobile home market in Escondido, and elsewhere, does not justify the vast expansion of *Yee's* reach condoned by the Ninth Circuit here, as petitioners have forcefully contented. Pet. at 11-21.

(2) The Eviction Moratoria Resulted in Devastating Real-World Consequences for RHA Landlord Members and Landlords Generally

The real-world effect of Washington State’s eviction moratoria was that tenants refused to pay rent and often held over on the premises long past the legal termination of the tenancies. Government programs, federal and state, did not fully compensate landlords for their massive financial losses. This includes enormous financial strain on those that provide housing for low-income tenants. *See Jevons v. Inslee*, No. 23-490, Br. of Amicus Curiae GRE Downtowner LLC in Support of Petitioners, https://www.supremecourt.gov/DocketPDF/23/23-490/292269/20231205093516355_23-490%20GRE%20Amicus%20Brief%20Final.pdf, (Seattle housing provider documenting \$1,270,757 in unpaid rent in 2022, up more than tenfold from recent years and paling in comparison to the rental assistance received from the State of Washington in the same year). Reimbursement programs did not make property owners, like RHA’s members, whole.

This financial strain was borne not just by large, sophisticated housing providers. It is well-documented that “about 20 million of the country’s 48 million rental units are owned and managed by individual” property owners, not corporations. Scott Lincicome, *The CDC Eviction Moratorium: An Epic Case Study in Very Bad Policy*, CATO INSTITUTE (Sept. 18, 2020) <https://www.cato.org/commentary/cdc-eviction-moratorium-epic-case-study-very-bad-policy>.

RHA member landlords were forced to suffer tenants occupying their land despite material breaches of their

leases. More critically, landowners were forced to “assume the financial distress” of their renters, without adequate compensation from the government. *Lincicome, supra*. While this may be a legitimate social policy during a time of crisis, the Constitution demands that just compensation be paid for this taking, or Washington has exceeded its authority.

Washington’s leaders commandeered residential landlords, by executive action to provide housing to its citizens. They denied landlords a basic property right, the right to exclude tenants who materially breached their lease for nonpayment of rent, thereby becoming trespassers. Private property owners must be provided just compensation as the Constitution requires.

D. CONCLUSION

For the reasons set forth by Petitioners and fully supported herein by RHA, this Court should grant review.

DATED this 12th day of February 2024.

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