

No. 23-490

In the Supreme Court of the United States

ENRIQUE JEVONS, as a MANAGING MEMBER of
JEVON PROPERTIES, LLC, *et al.*,
Petitioners,

v.

JAY INSLEE, in his official capacity of the
GOVERNOR OF THE STATE OF WASHINGTON,
et al.,
Respondents.

On Petition for Writ of Certiorari to the U.S. Court of
Appeals for the Ninth Circuit

**BRIEF OF *AMICUS CURIAE* GRE
DOWNTOWNER LLC IN SUPPORT OF
PETITIONERS**

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INTEREST OF *AMICUS CURIAE*

GRE Downtowner LLC (“GRE”) submits this *amicus curiae* brief in support of the petition for certiorari filed by Enrique Jevons, et al. (“Petitioners”).¹ GRE is the owner and operator of an apartment building located in Seattle, Washington that provides housing for low-income tenants. The apartment building is known as The Addison on Fourth (the “Addison”).

GRE’s interest in this case stems from the public burden the Addison bore and the financial losses it suffered after the state of Washington established a moratorium that prohibited residential rental property owners from evicting tenants for not paying rent during the COVID-19 pandemic. The state-wide eviction moratorium went into effect in March 2020 and extended through October 2021. During the same period, the City of Seattle also imposed a moratorium on residential evictions, although the effects of that moratorium were not lifted until October 2022.

GRE offers this *amicus curiae* brief to illustrate the burden borne and the economic losses suffered by

¹ Pursuant to Supreme Court Rule 37(2), all parties received notice of the intent to file this *amicus curiae* brief 10 days prior to the due date for such brief. Pursuant to Supreme Court Rule 37(6), undersigned counsel certifies that (A) no party’s counsel authored this brief, in whole or in part; (B) no party or party’s counsel contributed money that was intended to fund preparing or submitting this brief; and (C) no person, other than the *amicus curiae*, contributed money that was intended to fund preparing or submitting this brief.

residential landlords when they are unable to evict, despite a tenant's failure to pay rent. GRE's experience supports Petitioners' claims of economic harm and of being deprived of their expected return on investment on their rental properties. GRE's experience supports Petitioners' position that Washington's eviction moratorium constituted a compensable, temporary regulatory taking under the Fifth Amendment of the United States Constitution and that Petitioners raise important questions of federal law worthy of review.

SUMMARY OF ARGUMENT

During Washington's and Seattle's eviction moratoria, GRE was deprived of the Addison's economic and beneficial use and was unable to make decisions regarding the Addison's management and operation. GRE was prohibited from evicting tenants for not paying rent, could not charge late fees, and could not recover unpaid rent. Forced to provide housing to residential tenants for a public purpose without the payment of rent and with no guarantee of recovery, GRE suffered severe economic losses in the form of unpaid rent and was denied its expected return on investment.

Financial data taken from GRE's audited financial statements shows the burden and economic impact on the Addison. Certainly unpaid rent is part of the residential rental business. From 2016 to 2019, the Addison's largest annual loss due to unpaid rent was \$123,393. But GRE had no recourse to evict non-paying tenants during the eviction moratoria or to

otherwise recover unpaid rent. From 2020 to 2022, the Addison's losses from unpaid rent rose to \$463,122, then to \$699,817, and then to \$1,270,757, respectively.

GRE's losses help illustrate the important federal questions Petitioners seek to raise and that Petitioners were denied the protections required by the Fifth Amendment's takings clause. Washington's moratorium on evictions placed an unfair burden on residential rental property owners, such as GRE and Petitioners, that resulted in economic harm and interfered with their investment-backed expectations. Whether the Court of Appeals for the Ninth Circuit erred in failing to recognize a compensable, temporary regulatory taking presents issues of substantial federal importance that the Court should decide.

ARGUMENT

I. Development and Management of the Addison

The Addison is located in downtown Seattle. It was built in 1911 as a hotel and was later converted to low-income housing. In 2012, GRE purchased the building for \$12 million. GRE invested \$27 million more in major renovations to convert the building to 254 apartment homes, artist lofts, and musician studios. The Addison reopened in November 2013.

GRE is not the only stakeholder in the Addison. GRE's acquisition and renovation of the Addison were financed primarily with tax-exempt bonds issued by the Washington State Housing Finance Commission and credit-enhanced by the Federal Home Loan

Mortgage Corporation. The project is also federally subsidized. So long as the project continues to comply with requirements of the Internal Revenue Code, interest on the bonds is expected to remain exempt from federal income tax. The requirements include limits on the income of apartment residents and limits on the amount of rent that can be charged for an apartment.

Nearly identical restrictions on income levels and maximum rent amounts allow the project to also qualify for federal low-income housing tax credits. The availability of such credits, along with certain historic preservation tax credits for which the Addison also qualified, allowed GRE to obtain third-party investment to provide the equity required for the project.

Given its financing, the Addison provides housing for Seattle residents earning up to 60 percent of the area's median income. For example, in 2020, that was \$45,600 for one person. The maximum monthly rent for a studio apartment was \$1,162, while the maximum monthly rent for a one-bedroom unit was \$1,245. Rental payments for many of the Addison's tenants are subsidized with rental assistance from nonprofits or governmental agencies.

II. The Eviction Moratoria

Beginning in March 2020, Washington State Governor Jay Inslee issued a series of proclamations out of concern that residential tenants would be unable to pay rent during the COVID-19 pandemic

and unhoused.² The proclamations established a temporary, state-wide moratorium that prohibited residential rental property owners from evicting tenants for not paying rent or violating other lease terms during the pandemic.³

Under the moratorium, landlords could only evict tenants under limited circumstances, such as when a tenant created a significant and immediate risk to the health, safety, or property of others.⁴ The moratorium also precluded landlords from imposing fees for late rent payments occurring after February 29, 2020, treating unpaid rent as an enforceable debt, or recovering unpaid rent from a tenant's security deposit.⁵ The Washington moratorium ultimately extended through October 2021.⁶

Seattle also established its own eviction

² Governor Inslee's proclamations are available at <https://governor.wa.gov/office-governor/office/official-actions/proclamations?page=0> (all websites last visited Dec. 1, 2023).

³ See Wash. Office of the Governor, Proclamation 20-19 (Mar. 18, 2020); Wash. Office of the Governor, Proclamation 20-19.1 (Apr. 16, 2020); Wash. Office of the Governor, Proclamation 20-19.2 (June 2, 2020); Wash. Office of the Governor, Proclamation 20-19.3 (July 24, 2020); Wash. Office of the Governor, Proclamation 20.19-4 (Oct. 14, 2020); Wash. Office of the Governor, Proclamation 20-19.5 (Dec. 31, 2020); Wash. Office of the Governor, Proclamation 20-19.6 (Mar. 18, 2021); Wash. Office of the Governor, Proclamation 21-09.2 (Sept. 30, 2021).

⁴ See, e.g., Wash. Office of the Governor, Proclamation 20-19.1 at p. 3.

⁵ See, e.g., Wash. Office of the Governor, Proclamation 20-19.1 at p. 4.

⁶ See Wash. Office of the Governor, Proclamation 21-09.2.

moratorium during this time.⁷ While the Washington eviction moratorium was lifted in October 2021, Seattle extended its moratorium until February 2022.⁸ It also enacted an ordinance that continued eviction protections for another six months, to October 2022.⁹ During that period, residential tenants who could demonstrate enduring financial hardship had a defense to eviction. For all intents and purposes, the effects of Seattle's eviction moratorium ended in October 2022.

III. Sources of GRE's Data

GRE has gathered financial and other data from the Addison for the four calendar years prior to March 2020, as well as for calendar years 2020, 2021, and 2022, when the eviction moratoria were in effect. The data includes audited financial data regarding the Addison's maximum rents, losses due to unpaid rent, and federal and state rental assistance received during the COVID-19 pandemic, among other information. GRE keeps its records in the normal course of business, including its audited financial statements. GRE compiled the data from its records

⁷ See City of Seattle, Civil Emergency Order, Moratorium on Residential Evictions (Mar. 3, 2020), <https://durkan.seattle.gov/wp-content/uploads/sites/9/2020/03/Ex-B-Modified-EO-03162020-highlighted-FINAL.pdf>.

⁸ See Jamie Housen, Office of the Mayor, Eviction Moratorium Will Expire at the End of February (Feb. 11, 2022), <https://harrell.seattle.gov/2022/02/11/eviction-moratorium-will-expire-at-the-end-of-february/>.

⁹ Seattle Mun. Code § 22.205.090.

for the purposes of this *amicus curiae* brief. The data is submitted in an Appendix (“App.”).

GRE’s financial data shows the Addison’s losses in rental income before and during the eviction moratoria. It starts with the Addison’s maximum rents, which being set by federal restrictions also tend to represent market rates. To determine the Addison’s total revenue each year, GRE’s audited financial statements combine “max rents” with other revenue (“gain to lease,” “commercial rental revenue”¹⁰ and “other revenue”¹¹) and then subtract losses. *See* App. 1.

The Addison’s losses include “loss to lease,” “vacancy loss,” and “bad debt.” *See id.* “Loss to lease” represents the difference between a unit’s market rent and the actual rent paid. “Vacancy loss” is the loss from vacant units. “Bad debt” is rent that cannot be collected. The Addison’s losses due to unpaid rent are captured year to year by combining “loss to lease” and “bad debt.”

Lastly, the Appendix includes federal and state rental assistance. In 2020, 2021, and 2022, GRE received funds through the Coronavirus Aid Relief and Economic Security Act, (identified as “CARES Rental

¹⁰ The Addison includes commercial rental space. For purposes of the Appendix, “commercial rental income” includes commercial rent less commercial vacancy loss and commercial concessions.

¹¹ The Addison also derives income from other sources, such as laundry and vending machines, tenant application fees, and late fees.

Assistance Received”).¹² *See id.* In 2021 and 2022, it also received assistance from Washington state mitigation funds through the Landlord Damage Relief Program and Landlord Covid Relief Program.¹³ *See id.*

IV. The Undue Burden and Economic Impact of the Eviction Moratoria on the Addison.

The economic impact of COVID-19 eviction moratoria on residential rental properties has not gone unnoticed. In addressing the nationwide eviction moratorium imposed by the Centers for Disease Control and Prevention in September 2020, this Court observed that Congress’ nearly \$50 billion in emergency rental assistance was a reasonable proxy of the moratorium’s economic impact on landlords. *See Ala. Ass’n of Realtors v. Dep’t of Health & Hum. Servs.*, 141 S. Ct. 2485, 2489 (2021).

GRE can confirm the severe burden and economic impact imposed on the Addison by Washington’s eviction moratorium, as well as Seattle’s prohibition on evictions that lasted through October 2022. GRE can also confirm that federal and state rental assistance was woefully inadequate to cover the rental income it lost.

One way to view the Addison’s losses is the total losses due to “loss to gain,” “vacancy loss,” and “bad debt” over time. From 2016 to 2018, the Addison’s total losses were relatively constant, averaging \$186,174 per year. *See* App. 1. Total losses increased to

¹² *See* 15 U.S.C. § 9001, *et seq.*

¹³ *See* Wash. Rev. Code § 43.31.605.

\$439,969 in 2019 and then exploded from 2020 to 2022 when the Addison was subject to the eviction moratoria.¹⁴ *See id.* In 2020, the Addison’s total losses increased to \$983,654 and then to \$1,128,727 in 2021 and \$1,750,794 in 2022. *See id.* The Addison’s losses have continued to runout into 2023, in part due to lengthy eviction processes.¹⁵ *See id.*

Those losses include lost rental income. Part of the Addison’s lost income is represented by “loss to lease.” Again, loss or gain to lease is the difference between the Addison’s market rates and the actual rent paid. From 2016 to 2019, the Addison experienced minimal losses to lease, as well as gains to lease, depending on the year. *See id.* But starting in 2020, losses to lease increased tremendously—to \$388,789 in 2020, to \$649,199 in 2021, and to \$754,911 in 2022. *See id.*

The same was true of “bad debt,” which was relatively constant from 2016 through 2021, averaging

¹⁴ The Addison’s increase in losses in 2019 can be attributed to a change in screening potential tenants. In February 2018, Seattle enacted an ordinance that prohibits private residential property owners from inquiring into an applicant’s criminal history and from using that information if it is obtained. *See* Seattle Mun. Code § 14.09.025(A)(2). After GRE began to abide by the new ordinance, and natural turnover occurred, living conditions at the Addison declined. As show in the Appendix, move outs, evictions, and vacancies all increased in 2019, leading to a large increase in vacancy losses. *See* App. 1.

¹⁵ The Appendix includes data from GRE’s unaudited financial statements from January to November 2023. Total losses through November 2023 amount to \$1,995,724. *See* App. 1.

\$54,787 a year. *See id.* But in 2022, the Addison's bad debt accumulated and increased to \$515,846. *See id.*

Altogether, GRE's lost rental income increased exponentially. Prior to the eviction moratoria, the Addison's losses from unpaid rent fluctuated year to year, ranging from \$85,737 in 2016, to \$28,628 in 2017, to \$15,120 in 2018, and to \$123,393 in 2019. *See id.* But during the eviction moratoria, the Addison's total losses for unpaid rent rose to \$463,122 in 2020, to \$699,817 in 2021, and to \$1,270,757 in 2022. *See id.* Compare that to what GRE received in federal and state rental assistance in those years: \$91,384 in 2020, \$442,341 in 2021, and \$101,402 in 2022. *See id.*

What accounts for the considerable losses in rental income from 2020 to 2022? The only explanation is the eviction moratoria. While the moratoria did not excuse tenants from paying rent, many tenants did not pay. And while GRE received federal and state rental assistance for some non-paying tenants, there was no guarantee that those tenants would continue paying rent and many did not. GRE was unable to manage the Addison pursuant to tenants' lease agreements, and was forced to accept the occupation of its property regardless of whether tenants paid rent. GRE was unable to evict the Addison's non-paying tenants. Nor was it able to impose late fees, treat unpaid rent as an enforceable debt, use deposits to cover unpaid rent, or otherwise fully recover its losses.

As documented above, the burden and impact to GRE and the Addison, imposed for a public purpose,

was considerable, just as it was on other Washington residential landlords. Like Petitioners, GRE suffered severe economic losses from unpaid rent and was deprived of its investment-backed expectations. The burden and economic impact of the moratorium on landlords helps illustrate the importance of the federal questions Petitioners' raise in their petition for writ of certiorari. Petitioners should be heard on whether they were temporarily deprived of the economic use of their property without just compensation and denied the protections required by the Fifth Amendment.

CONCLUSION

When Governor Inslee established the Washington state-wide eviction moratorium, owners of residential rental properties bore a significant societal and economic burden to house tenants who did not pay rent during the COVID-19 pandemic. GRE respectfully urges the Court to grant the petition for writ of certiorari.

Respectfully submitted,

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APPENDIX

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Fold-Out Exhibit

2016-2023 Data from The AddisonApp.1

2016-2023 Data from The Addison

		Moratorium							Jan - Nov unaudited*
		2016	2017	2018	2019	2020	2021	2022	2023*
4000-000	REVENUE:								
4005-000	RENTAL REVENUE								
4005-100	Max Rents	\$2,922,696	\$2,933,739	\$3,128,544	\$3,415,837	\$3,789,921	\$3,892,392	\$4,082,267	\$3,938,173
4005-200	Loss/Gain to Lease	\$ (52,623.00)	\$ 25,667.79	\$ 25,631.00	\$ (47,780.00)	\$ (388,789.00)	\$ (649,199.00)	\$ (754,911.00)	\$ (449,305.00)
4050-020	Vacancy Loss	\$ (106,953.71)	\$ (145,400.32)	\$ (176,684.00)	\$ (316,576.00)	\$ (520,532.00)	\$ (428,910.00)	\$ (480,037.00)	\$ (1,484,154.12)
4050-040	Bad Debt	\$ (33,113.80)	\$ (54,295.68)	\$ (40,751.03)	\$ (75,613.46)	\$ (74,332.56)	\$ (50,618.45)	\$ (515,846.00)	\$ (62,264.75)
4010-000	Commercial Rental Revenue	\$ 90,668.00	\$ 190,191.00	\$ 32,673.00	\$ 200,000.00	\$ 204,228.00	\$ 201,479.00	\$ 159,023.00	\$ 92,496.95
	Other Revenue	\$139,249	\$106,276	\$112,341	\$117,750	\$58,373	\$41,976	\$52,508	\$209,787
	Total Revenue	\$2,959,922	\$3,056,177	\$3,081,754	\$3,293,618	\$3,068,868	\$3,007,120	\$2,543,004	\$2,244,733
	Gross Loss less Vacancy Loss	\$ (85,736.80)	\$ (28,627.89)	\$ (15,120.03)	\$ (123,393.46)	\$ (463,121.56)	\$ (699,817.45)	\$ (1,270,757.00)	\$ (511,569.75)
	Gross Total Loss	\$ (192,690.51)	\$ (174,028.21)	\$ (191,804.03)	\$ (439,969.46)	\$ (983,653.56)	\$ (1,128,727.45)	\$ (1,750,794.00)	\$ (1,995,723.87)
	Total Amount of CARES Rental Assistance Received					\$91,384	\$401,429	\$74,003	\$1,208
	Net Total Loss	\$ (192,690.51)	\$ (174,028.21)	\$ (191,804.03)	\$ (439,969.46)	\$ (892,269.28)	\$ (727,298.03)	\$ (1,676,791.37)	\$ (1,994,515.87)
	Number of Move Outs	118	114	106	131	107	38	77	101
	Total Debt Received from State Mitigation Funds	n/a	n/a	n/a	n/a	n/a	\$ 40,911.98	\$ 27,399.00	\$ 265,089.00
	Total Debt Required to forgive from State Mitigation Funds	n/a	n/a	n/a	n/a	n/a	\$ (5,796.45)	\$ (796.00)	\$ (113,637.47)
5001-169	ADMINISTRATION EXPENSES								
5001-290	Evictions	\$ 14,947.74	\$ 20,111.62	\$ 26,740.47	\$ 45,416.64	\$ 11,223.00	\$ 5,268.00	\$ 6,790.00	\$ 34,188.06