No. 24-435

In The
Supreme Court of the United States

GHP MANAGEMENT CORPORATION *et al.*,
Petitioners,

v.

CITY OF LOS ANGELES *et al.*,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF *AMICI CURIAE* APARTMENT ASSOCIATION OF LOS ANGELES COUNTY, INC., APARTMENT OWNERS ASSOCIATION OF CALIFORNIA, INC., CALIFORNIA BUSINESS ROUNDTABLE, CALIFORNIA RENTAL HOUSING ASSOCIATION, AND WESTERN MANUFACTURED HOUSING COMMUNITIES ASSOCIATION IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

In March 2020, the City of Los Angeles adopted one of the most onerous eviction moratoria in the country, stripping property owners like Petitioners of their right to exclude nonpaying tenants. The City pressed private property into public service, foisting the cost of its coronavirus response onto housing providers to avoid expensive and less expedient—but constitutional—means to help those in need. In doing so, the City in effect imposed and transferred to defaulting tenants an exclusive easement in the private property of others without paying for it. By August 2021, when Petitioners sued the City seeking just compensation for that physical taking, back rents owed by their unremovable tenants had ballooned to over $20 million. The moratorium concluded in 2024.

Relying on a mobile home rent control case from this Court, *Yee v. City of Escondido*, the Ninth Circuit affirmed dismissal of Petitioners' complaint because they "voluntarily opened" their properties to tenants in the first instance and thus could never state a physical takings claim against the City's law, drastic as it was. The Federal and Eighth Circuits disagree. In *Darby Development Co. v. United States* and *Heights Apartments, LLC v. Walz*, both courts held *Yee* inapposite and validated identical claims because moratoria like the City's deprive owners of the right to exclude akin to *Cedar Point Nursery v. Hassid*.

The question presented is:

Whether an eviction moratorium depriving property owners of the fundamental right to exclude nonpaying tenants effects a physical taking.

TABLE OF CONTENTS

TABLE OF AUTHORITIES

CASES

CONSTITUTIONAL PROVISIONS

STATUTES, RULES AND REGULATIONS

OTHER AUTHORITIES

IDENTITIES AND INTERESTS OF *AMICI CURIAE*[1]

Founded in 1917, the Apartment Association of Los Angeles County, Inc. d/b/a Apartment Association of Greater Los Angeles ("AAGLA") is a California non-profit association comprised of over 10,000 members who own or manage more than 50,000 rental housing units throughout greater Los Angeles. AAGLA's mission is to provide the tools and resources to improve real estate management and operations in order to help its members provide safe housing and to ensure fair returns on their investments. AAGLA advocates for the protection of property rights on behalf of its members and the rental housing industry at the local, state, and federal levels of government. Approximately 80 percent of AAGLA's members can be characterized as "mom and pop" businesses, owning five or fewer units. Given AAGLA's geographical focus within the City of Los Angeles, the organization's members were at ground zero for the City's three-year eviction moratorium and bore the brunt of the substantial harm that the City wrought with that moratorium.

The Apartment Owners Association of California, Inc. ("AOA") has provided California

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[1] Pursuant to this Court's Rule 37.2, counsel for the parties have been provided with timely notice of intent to file this brief. Pursuant to Rule 37.6, no party, or counsel for any party, authored this brief in whole in or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief, and no person other than amici, their members, or their counsel have made a monetary contribution to this brief's preparation or submission.

apartment owners with low-cost, full-service, landlord-oriented resources for over 40 years. Founded in 1982, AOA has become one of the largest apartment associations in the United States, providing professional guidance and economic benefits for apartment owners throughout California. AOA supports the protection of property rights and the promotion of free enterprise. Many of AOA's members own rental properties in the City of Los Angeles and suffered substantial harm under the City's eviction moratorium.

For nearly 50 years, the California Business Roundtable (the "Roundtable") has been a key advocate for economic growth, aligning policy, research, and political solutions with the state's diverse business needs. As California's economy has grown and changed, the Roundtable has helped drive policy solutions that allow businesses and working families to prosper. Comprising senior leadership of major industry leaders, the Roundtable focuses on job creation and improving the lives of all Californians. The Roundtable's efforts center on building solutions that eliminate barriers and foster opportunities, not just for the business community, but for all residents who call California home. The Roundtable champions innovation and collaboration, connecting policy to economic data, educating voters, and directly advocating political action. Among the Roundtable's members are rental-property owners who suffered under the City of Los Angeles's eviction moratorium.

The California Rental Housing Association ("CalRHA") represents more than 36,000 members, comprised primarily of small, family-owned housing

providers that own fewer than ten rental units. CalRHA members provide over 733,000 homes to Californians throughout the state. CalRHA's purpose is to advocate for the rental housing industry to collectively address industry needs, including through grassroots mobilization and local and state governmental advocacy aimed at contributing to change in the multifamily housing industry. CalRHA advocates for the protection of property rights on behalf of its members and the multifamily rental housing industry at the local, state, and federal levels of government. The City's eviction moratorium particularly devastated the small, mom-and-pop rental-property owners that CalRHA represents.

Western Manufactured Housing Communities Association ("WMA") is a nonprofit organization created in 1945 for the exclusive purpose of promoting and protecting the interests of owners, operators, and developers of manufactured home communities in California. WMA is a statewide trade association whose members are largely mobile-home park owners who collectively own, operate and control over 194,000 mobile-home spaces in California. WMA has over 1,600 member parks located across all of California's 58 counties. The vast majority of WMA's member communities are family-owned-and-operated businesses dedicated to providing quality housing to Californians. Community owners, operators, and developers of manufactured home communities in California, as well as suppliers of industry goods and services, maintain membership in WMA. WMA's activities include representation before the California State Legislature, regulatory agencies and local elected officials. WMA's members suffered under the

City's oppressive eviction moratorium, and WMA's representation of mobile-home park owners is particularly relevant, considering that *Yee v. City of Escondido* itself involved mobile-home parks and their tenants. 503 U.S. 519 (1992).

This case raises issues of significant interest to amici, as many of their members have been subject to onerous eviction moratoria in the City of Los Angeles and other jurisdictions throughout the State of California. Given the real injuries they have suffered, amici can provide the Court with a real-world understanding of how such moratoria have affected the rental housing industry and its ability to provide safe and affordable places to live.

INTRODUCTION AND SUMMARY OF ARGUMENT

Thanks to the Ninth Circuit's and other courts' misinterpretations of *Yee v. City of Escondido*, 503 U.S. 519 (1992), every tenant who walks into a rental property brings with him the shadow of a potential government takeover. Voluntarily inviting members of the public to do business on or in one's property cannot, however, result in the abject surrender of the owner's right to exclude people from that property. *But see GHP Mgmt. Corp. v. City of Los Angeles*, 2024 U.S. App. LEXIS 13097 (9th Cir. May 31, 2024); *El Papel, LLC v. City of Seattle*, 2023 U.S. App. LEXIS 28487, at *4 (9th Cir. Oct. 26, 2023) (*Yee* "controls here and forecloses the Landlords' per se physical-taking claim"), *cert. denied*, 144 S. Ct. 827 (2024); *Gonzales v. Inslee* 535 P.3d 864 (Wash. 2023) (rejecting applicability of *Cedar Point* and citing *Yee* to affirm a

dismissal of takings claims involving an eviction moratorium), *cert. denied*, 144 S. Ct. 2685 (2024); *Gallo v. District of Columbia*, 610 F. Supp. 3d 73, 88 (D.D.C. 2022) ("The District's laws do not force Gallo to give anyone access to his property that he did not invite. So he does not suffer the same infringement on his right to exclude as the growers in *Cedar Point*.").

Amici agree with Petitioners that the Ninth Circuit, in its decision below, wrongly interpreted *Yee v. City of Escondido*, 503 U.S. 519, and allowed the City of Los Angeles's COVID-19 eviction moratorium to strip rental-property owners of their fundamental property rights without compensation for *three long years*. The Takings Clause does not support the proposition that an initial invitation for an individual to occupy a space involves a concomitant concession that the government may effectively seize an easement over that space on behalf of that individual. In any event, this Court should now distinguish and limit the scope of those of its decisions that may have offered a basis for such an interpretation. Indeed, this Court's recent *Cedar Point Nursery* decision does not support a previous-invitation exception to the Takings Clause, but some state and federal courts, like the Ninth Circuit, still wrongly rely on cases such as *PruneYard Shopping Center v. Robins*, 447 U.S. 74 (1980) and *Yee* to deprive property owners of their fundamental property rights. *See, e.g., Cedar Point Nursery v. Shiroma*, 923 F.3d 524, 531-534 (9th Cir. 2020) (citing *PruneYard* for access-based exception to Takings Clause), *rev'd*, *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021); *Fletcher Props. v. City of Minneapolis*, 2 N.W.3d 544, 555 (2024) (Minnesota Court of Appeals citing *PruneYard* and *Yee* to find a

previous-invitation exception to the Takings Clause); *Englewood Hosp. & Med. Ctr. v. State*, 478 N.J. Super. 626, 645 (2024) (New Jersey Superior Court Appellate Division applying *Yee* and *PruneYard* and finding public access precluded the implication of the Takings Clause because "the public's presence . . . is a natural element of its business"). It is time for this Court to revisit the so-called previous-invitation exception, resolve the confusion surrounding *Yee*, and clearly articulate that such a purported exception does not, in fact, exist.

In this brief, amici also seek to demonstrate the devastation that lower courts' misinterpretation of *Yee* has wrought, not just in the City of Los Angeles but nationwide. Court-approved violations of the Takings Clause during the enforcement of eviction moratoria across the country caused substantial harm during the pandemic and have significantly reduced the amount of rental housing available since the pandemic's passing.

For these reasons, and those stated in the Petition, the Court should grant review.

ARGUMENT

I. THE COURT SHOULD REVISIT THE PURPORTED PREVIOUS-INVITATION EXCEPTION TO PHYSICAL TAKINGS

At its heart, the Ninth Circuit's decision below rests upon its conclusion that Los Angeles's forcible conversion of private property into free public housing was not a "physical taking because the Landlords

[had] voluntarily opened their property to occupation by tenants." *GHP Mgmt. Corp. v. City of Los Angeles*, 2024 U.S. App. LEXIS 13097, at *3 (May 31, 2024). To reach this aberrant result, the Ninth Circuit relied heavily on *Yee*, as well as on *FCC v. Fla. Power Corp.*, 480 U.S. 245 (1987).[2] *Yee* was the culmination of a line of invitation-related cases that ultimately began with *PruneYard*, 447 U.S. 74 (1980). The Takings Clause, on its face, does not justify such reasoning, nor do this Court's recent decisions. This Court can distinguish and limit the cases on which the Ninth Circuit relied in order to resolve any confusion around the existence of a previous-invitation exception to the Takings Clause.

A. There Is No Basis for a Previous-Invitation Exception in the Takings Clause's Text or History

The Takings Clause in the Fifth Amendment to the U.S. Constitution provides unambiguous protection to property owners against the threat of uncompensated government appropriations, stating "nor shall private property be taken for public use, without just compensation." U.S. Const. amend. V. For nearly two hundred years, the plain text of this

[2] The Ninth Circuit, in addition to blatantly ignoring this Court's decision in *Cedar Point Nursery*, ineffectively attempted to distinguish *Horne v. Department of Agriculture*, arguing that *Horne* "involved a third party (the government) taking property, rather than an adjustment of voluntary relations between a landlord and a tenant." *GHP Mgmt. Corp. v. City of Los Angeles*, 2024 U.S. App. LEXIS 13097, at *3 n.1 (citing 576 U.S. 351, 365 (2015)).

language held sway, with no exception for previous invitations.

Indeed, as recently as *Lloyd Corp. v. Tanner*, 407 U.S. 551 (1972), this Court upheld a property owner's right to exclude handbill distributors from a shopping center open to the public: "Nor does property lose its private character merely because the public is generally invited to use it for designated purposes." *Id*. at 569. Further, the Court held, "[the] essentially private character of a store and its privately owned abutting property does not change by virtue of being large or clustered with other stores in a modern shopping center." *Id*.

In 1980, however, the Court did an abrupt about-face in *PruneYard*, ruling that it was a permissible exercise of California's police power for the state to prohibit private shopping centers from excluding protestors. 447 U.S. at 81. Importantly, the Court in that case also declared that such a prohibition was not a taking under the Takings Clause. While recognizing that "[i]t is true that one of the essential sticks in the bundle of property rights is the right to exclude others," 447 U.S. at 82 (citing *Kaiser Aetna v. United States*, 444 U.S. 164, 176-180 (1979)), the Court determined that the California Constitution's requirement that private property owners allow individuals to express themselves on their properties was a permissible exercise of California's "police power or its sovereign right to adopt in its own Constitution individual liberties more expansive than those conferred by the Federal Constitution." 447 U.S. at 81. It is important to note that nowhere in *PruneYard*'s discussion of the

Takings Clause, 447 U.S. at 82-85, is there a direct reference to the existence of a previous-invitation exception to the Takings Clause. *PruneYard* did, however, make much of the fact that the shopping center was open to the public and that the center was a place "to which the public is invited." 447 U.S. at 76.

Rumblings of a possible invitation-based exception to the Takings Clause could be heard in other cases leading up to *Yee*. In *Florida Power*, this Court held that no taking occurred where a lessor who invites a lessee to lease property at a negotiated rent must continue to lease property to him at a lower, regulated rent. *Florida Power Corp.,* 480 U.S. at 252-253. The *Florida Power* Court acknowledged that, in *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), it "found that . . . prior decisions interpreting the Takings Clause, along with the purposes of the Clause itself, compelled the conclusion that 'a permanent physical occupation authorized by government is a taking without regard to the public interests that it may serve.'" *Florida Power*, 480 U.S. at 251 (quoting *Loretto*, 458 U.S. at 426). Nevertheless, *Florida Power* announced that, in terms of state regulation of commercial rents, "it is the invitation, not the rent, that makes the difference." 480 U.S. at 252. This proved the thin end of the wedge.

Five years later, *Yee* drew upon *Florida Power* and *PruneYard* to expand on the applicability of a previous-invitation exception. *Yee*, a rent-control case involving mobile-home park owners, refused to characterize rent control as a taking because, "[p]ut bluntly, no government has required any physical invasion of petitioners' property. Petitioners' tenants

were invited by petitioners, not forced upon them by the government." 503 U.S. at 528. Moreover, the Court found: "The Escondido rent control ordinance, even considered against the backdrop of California's Mobilehome Residency Law, does not authorize an unwanted physical occupation of petitioners' property. It is a regulation of petitioners' *use* of their property, and thus does not amount to a *per se* taking." 503 U.S. at 532 (emphasis in original). Part of *Yee*'s reasoning, however, relied on the fact that the mobile-home park owners still had means by which they could evict their tenants. 503 U.S. at 528.

Since *Yee*, at most there arguably has been a previous-invitation exception to takings involving some degree of rent regulation. In the background, however, remained the bedrock calculus that even the *PruneYard* Court admitted governed Takings Clause claims:

> [T]he determination whether a state law unlawfully infringes a landowner's property in violation of the Taking Clause requires an examination of whether the restriction on private property [forces] some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.

447 U.S. at 82-83 (citations and internal quotations omitted). This examination "entails inquiry into such factors as the character of the governmental action, its economic impact, and its interference with reasonable investment-backed expectations." *PruneYard*, 447

U.S. at 83 (citing *Kaiser Aetna v. United States*, 444 U.S. 164, 175 (1979)); *see also Penn Central Transportation Co. v. New York City*, 438 U.S. 104, 124 (1978). Indeed, rent regulation itself is not immune from this analysis. As even the *PruneYard* Court recognized, when "regulation goes too far it will be recognized as a taking." *PruneYard*, 447 U.S. at 82-83 (quoting *Pennsylvania Coal Co.* v. *Mahon*, 260 U.S. 393, 415 (1922)).

Particularly since COVID-19, lower courts have wrongly fastened upon *Yee* to justify oppressive and uncompensated government intrusions into fundamental property rights, including—as in this case—the right to exclude. Through the enforcement of eviction moratoria and the effective cancellation of rents, governments have converted private property into free public housing under the aegis of a non-existent exception to the Takings Clause. This Court should set these governments straight and uphold the fundamental property right to exclude individuals from one's own property.

B. The Court's *Cedar Point Nursery* Decision Effectively Precludes a Previous-Invitation Exception to the Takings Clause

Since *Yee*, this Court has had reason to revisit its jurisprudence on the Takings Clause in *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021). In that case, the Court noted that "[t]he right to exclude is 'one of the most treasured' rights of property ownership." *Cedar Point Nursery*, 594 U.S. at 149. *Cedar Point Nursery*'s muscular support of an owner's

right to exclude demolishes any insinuations of a previous-invitation exception.

In *Cedar Point Nursery*, this Court had to determine whether a California regulation mandating that agricultural employers allow union organizers onto their property for up to three hours per day, 120 days per year, was a taking. The *Cedar Point Nursery* Court emphatically found that requiring an owner to admit someone to his property was not merely a regulation of use. "[A]ccess regulation appropriates a right to invade the [owners'] property and therefore constitutes a *per se* physical taking." *Id.* at 140. That such a limitation was not permanent was immaterial, as "the duration of the appropriation bears only on the amount of compensation due." *Id.* (citing *United States v. Dow*, 357 U. S. 17, 26 (1958)).

In mounting such a ringing defense of this "essential stick[] in the bundle of property rights," this Court has signaled that a previous-invitation exception cannot exist. *Kaiser Aetna v. United States*, 444 U.S. at 176. Indeed, under the *Kaiser Aetna / Penn Central* criteria, there can be no such exception for the substantial, state-sponsored harm—such as the effective cancellation of rents and the destruction of the right to exclude—supported by the allegations in the instant case.

The Ninth Circuit had access to the Court's reasoning in *Cedar Point Nursery* and yet it still managed to misinterpret *Yee* in the decision below. *See GHP Mgmt. Corp.*, 2024 U.S. App. LEXIS 13097, at *3 (in a citation, the Ninth Circuit acknowledged that *Cedar Point Nursery* stands for the proposition

that "government-authorized invasions of property . . . are physical takings" then pointedly ignored that a government-authorized invasion of property had taken place). This Court should grant certiorari in this matter to build on its *Cedar Point Nursery* reasoning, resolve any uncertainty about the inapplicability of *Yee* to non-rent-control cases, and decisively call the wholesale conversion of rental housing into free public housing for years on end what it was: a government taking requiring compensation.

II. FORCING RENTAL-PROPERTY OWNERS TO PROVIDE FREE PUBLIC HOUSING FOR TENANTS WHOM THEY COULD NOT REMOVE FOR FAILURE TO PAY RENT CAUSED DEVASTATING HARM

A. Los Angeles's Eviction Moratorium Caused Substantial Harm to Area Rental-Property Owners

The City's moratorium has imposed unendurable financial strains on rental-property owners, including amici's members, by forcing them "alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40, 48 (1960). The City failed to adequately mitigate this substantial harm by compensating the rental-property owners who were conscripted to provide free housing.[3] Many of the rental-property owners were

[3] Petitioners allege they received *no* compensation for the taking that the City's moratorium effectuated. See Pet. App. E at 55a (Complaint, ¶ 64). The City did enact an emergency rental

mom-and-pop businesses that were devastated by the City's demand that they maintain non-paying tenants in their properties for years. As Brookings Institute scholars found, "without rental income, a significant number of noncorporate, 'mom and pop' landlords—who may be coping with their own unemployment or additional expenses related to the COVID-19 pandemic—will also struggle to pay their mortgages, utilities bills, property taxes, maintenance costs, and other property-related expenses." Kristen Broady *et al.*, *An eviction moratorium without rental assistance hurts smaller landlords, too*, Brookings Institute, September 21, 2020, available at https://bit.ly/3URIyjs. In the absence of effective compensation, rental-property owners have had to bow out of the market for fear that the government would pass laws conscripting them and their properties for public use once again. This has threatened a loss of badly needed housing for renters.

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assistance subsidy program for needy tenants affected by the COVID-19 pandemic. But the program subsidized only a fraction of rental-property owners' losses, and it made funds available to tenants only for a five-day period in July 2020, only by lottery, only to means-tested tenants (excluding middle to higher-income tenants), and subject to other conditions and criteria; consequently, the program was utterly ineffective in justly compensating the City's rental-housing property owners for the moratorium's taking. *See Supplemental Report on the Implementation of a Citywide Emergency Rental Assistance Subsidy Program for Tenants Unable to Pay Rent Due to Circumstances Related to the Coronavirus (COVID-19) Pandemic,* Los Angeles Housing Community Investment Department, June 12, 2020, at p. 4, available at https://bit.ly/4hO07ee (generally describing program); *"Emergency Renters Relief Program" Flyer*, Los Angeles Housing Community Investment Department, 2020, available at https://bit.ly/4eCJTSi.

See, e.g., Kerry Jackson, *A Delinquent Tenant's Paradise: Eviction prohibitions remain in effect in California*, City Journal, March 28, 2023, available at https://bit.ly/40QuY3E ("[F]inancial stress during the pandemic has 'led landlords to consider leaving the rental market altogether, potentially limiting the supply of units and pushing up rents further.'" (quoting *Pandemic eviction bans have spawned a renters'-rights movement*, The Economist, February 16, 2023, available at https://bit.ly/417lzVN)).

The City's reaction to the COVID-19 pandemic seemingly targeted amici's members for financial ruin, requiring them to maintain tenants ensconced rent-free in their properties for years. In response to the pandemic's outbreak in the State of California, effective March 31, 2020, the City of Los Angeles implemented its eviction moratorium through Article 14.6 of its municipal code: "Temporary Protection of Tenants During COVID-19 Pandemic." Los Angeles Municipal Code, ch. IV, art. 14.6, This moratorium retroactively applied to "nonpayment eviction notices, no-fault eviction notices, and unlawful detainer actions based on such notices, served or filed on or after the date on which a local emergency was proclaimed," March 4, 2020. *Id.* at § 49.99.5. There was no mechanism for amici's members to exclude nonpaying tenants from their properties, and the financial harm continued to mount for the rental-property owners who saw the City turn their property into free public housing. The purportedly "temporary" eviction moratorium ended up running from March 2020 to March 2023, and tenants had up to a year following the moratorium's expiration to pay back rent without being evicted. See *Los Angeles's Last*

Remaining COVID-19 Eviction Protections to Expire on February 1, National Low Income Housing Coalition, January 16, 2024, available at https://bit.ly/40NrcIg. In early February 2024, the City expanded the moratorium for some tenants. City of Los Angeles Ordinance No. 188109 (passed Feb. 2, 2024), available at https://bit.ly/40OhFR9. Thus, some of amici's members were unable to exercise control over their properties for more than four years.

By the end of the eviction moratorium, the National Equity Atlas, a collaboration between Oakland research group Policy Link and the USC Equity Research Institute, estimates that 199,520 renters in Los Angeles were behind on their payments by a total of $542 million. *Evictions rise, tenants scramble for help as LA County protections expire*, Cal Matters, March 23, 2023, http://bit.ly/4erKd6p (citing the National Equity Atlas, a collaboration between Oakland research group Policy Link and the USC Equity Research Institute).

Again, the City effectively provided no compensation to rental-property owners for taking over their properties. *See*, *supra*, n.3. Denied an income by the City, Los Angeles rental-property owners—many of which were mom-and-pop businesses—were left without money to pay their own mortgages, their own property taxes, and even the necessary maintenance and repair costs to protect the properties whose control the government took from them. *See, e.g., COVID-19 and Rent Relief: Understanding the Landlord Side*, The Hous. Initiative at Penn, 2020, available at http://bit.ly/4euvdo6.

B. Similar COVID-19 Eviction Moratoria Caused Substantial Harm to Rental-Property Owners Across the Country

Eviction moratoria throughout the country forced rental-property owners to come face-to-face with the prospect of providing rent-free housing to millions of tenants. As in Los Angeles, much of the country's rental housing is provided by individuals who own and operate small rental properties. And while Los Angeles's eviction moratorium may be the most onerous example, such property grabs throughout the nation hit mom-and-pop rental-property owners the hardest.

In its 2021 Rental Housing Finance Survey, the United States Census Bureau found that, among 49.5 million rental housing units in the country, nearly 46 percent of them are small rental properties of one-to-four units. *2021 Rental Housing Finance Survey*, United States Census Bureau, last updated February 8, 2023, available at https://bit.ly/40Jys7V. In addition, the Bureau determined that, among all owners of rental housing in the United States, 69 percent are individuals. *Id.* The Harvard Joint Center for Housing Studies concluded that renters and owners of small properties are disproportionately likely to face COVID-19 related economic hardship. Sam Gilman, *The Return on Investment of Pandemic Rental Assistance: Modeling a Rare Win-Win-Win*, 18 Ind. Health L. Rev. 293, 307-08 (2021). Moreover, small rental properties are more likely to be owned by racial minorities. *See* Jung Hyun Choi *et al.*, *Owners and Renters of 6.2 Million Units in Small Buildings*

are Particularly Vulnerable during the Pandemic, Urban Inst.: Urban Wire, Aug. 10, 2020, available at https://bit.ly/40Qwgvw; *see also* Nathaniel Decker, *The Uneven Impact of the Pandemic on the Tenants and Owners of Small Rental Properties 5*–6, Terner Ctr. for Hous. Innovation, 2021, available at https://bit.ly/498oi3f. In addition, owners of modest rental properties are more likely to be retirees and other individuals with limited outside income. *See* Elijah de la Campa, *The Impact of COVID-19 on Small Landlords: Survey Evidence from Albany and Rochester, New York*, Joint Ctr. for Hous. Stud. of Harvard Univ., 2021, available at https://www.jchs.harvard.edu/sites/default/files/research/files/harvard_jchs_small_landlord_survey_de_la_campa_2021_0.pdf. Thus, eviction moratoria like the one imposed by the City of Los Angeles have affected those owners least able to absorb the extraordinary costs associated with the takings of their properties.

The National Low Income Housing Coalition has estimated that by the end of December 2020, before even the first year of the pandemic was complete, tenants across the country owed their landlords between $30 and $70 billion in back rent, with that figure surging in 2021. *See Statement from NLIHC President and CEO Diane Yentel on the COVID Relief Bill and Emergency Relief for Renters*, National Low Income Housing Coalition, December 20, 2020, available at https://bit.ly/3USxPFq. By 2021, the percent of renters behind on rent in the past year had increased to 17 percent, compared with 10 percent in 2019. *See Economic Well-Being of US Households in 2021*, Federal Reserve Board., 2022, available at https://bit.ly/3UTQtgp.

In state after state, rental-property owners sought the reinstatement of their property rights or at least just compensation for the governments' takings. For the most part, though, their efforts were in vain. State and federal courts wrongly pointed to *Yee* and blamed the landlords for inviting tenants into their properties in the first place, linking an initial invitation to a tenant with a free pass for government appropriation. *See, e.g., S. Cal. Rental Hous. Ass'n v. Cnty. of San Diego*, 550 F. Supp. 3d 853, 865 (S.D. Cal. 2021) ("Unlike an invasion of property by an uninvited guest, the landlords here have solicited tenants to rent their properties, and the Ordinance simply regulates landlords' relationship with tenants."); *Farhoud v. Brown*, No. 3:20-CV-2226-JR, 2022 WL 326092, at *10 (D. Or. Feb 3, 2022) ("Like the park owners in *Yee*, Plaintiffs here voluntarily invited their tenants onto their property."); *Rental Hous. Ass'n v. City of Seattle*, 512 P.3d 545, 558 (Wash. Ct. App. 2022) ("The Landlords voluntarily invited the tenants to live in their homes and the ordinances regulate a landlord-tenant relationship that has already been established by the parties.").

These states and municipalities chose to seize and sacrifice the financial viability of one segment of society—rental-property owners—to give succor to another segment of society—tenants. Politically, it may have been difficult to fully pay rental-property owners for the fundamental property rights that the governments had taken. But *constitutionally*, it was required. The misinterpretation of *Yee* has become a nationwide problem that requires fixing.

C. The Eviction Moratorium Has Hamstrung Rental-Property Owners' Ability to Provide Safe and Affordable Housing

By forcing rental-property owners to bear the brunt of the financial strains related to pandemic, the City has substantially endangered its safe and affordable housing in the long-run. Prior to the pandemic, the housing market was already significantly constrained. The short-sightedness of the City's eviction moratorium, however, has resulted in rental-property owners leaving the market and decreasing the stock of affordable housing available to prospective tenants. This has exacerbated the City's housing shortage—which, in turn, has driven up rents and thereby hurt low-income tenants in particular and pricing them out of the market entirely. City efforts to regulate rents in response to this crisis will encourage more property owners to opt out entirely from the rental market, again reducing the availability of affordable housing for those who need it most. And so the downward spiral continues. *See, e.g.*, Elijah A. de la Campa and Vincent J. Reina, *Landlords' rental businesses before and after the COVID-19 pandemic: Evidence from a National Cross-Site Survey*, J. Hous. Econ, December 14, 2022, available at https://bit.ly/40PofqL ("[M]any owners also disinvested in their rental properties through deferred maintenance, missed mortgage payments, and property sale listings. Landlords of color pursued disinvestment strategies during the pandemic at an elevated rate compared to white landlords."); Mary Ellen Cagnassola, *Landlords, Frustrated with Eviction Moratorium, Sell to Wealthy Investors to*

Stem Losses, Newsweek, August 19, 2021, available at https://bit.ly/4frKk2V ("'A lot of landlords are disgusted. They are selling at losses. They are getting out, period,' said Michael Reid, a mortgage loan officer who sold three of his houses."); Jonathan O'Connell, *With tenants who won't pay or leave, small landlords face struggles of their own*, Washington Post, August 10, 2021, available at https://bit.ly/4fyM0rO ("some mom-and-pop landlords are giving up and deciding to sell"); Diana Olick, *'The eviction moratorium is killing small landlords,' says one, as ban is extended another month*, CNBC, June 25, 2021, available at https://bit.ly/3CuAXkE ("'Each passing month further escalates the risk of losing an ever-increasing amount of rental housing, ultimately jeopardizing the availability of safe, sustainable and affordable housing for all Americans,' wrote Bob Pinnegar, CEO of the National Apartment Association"); Abby Vesoulis, *How Eviction Moratoriums Are Hurting Small Landlords—and Why That's Bad for the Future of Affordable Housing*, Time, June 11, 2020, available at https://bit.ly/3CuEzmK ("Individual property owners are likely to sell to families who will convert their rentals to personal housing, or to large investment groups—which, in turn, are much more likely to renovate, rebuild, and increase the rent.")

Even prior to the COVID-19 pandemic, there was a crisis in available rental property in Los Angeles. A Neighborhood Data for Social Change ("NDSC")[4] study of the Los Angeles housing market

[4] NDSC is a project within the University of Southern California Lusk Center for Real Estate "focused on using data to help local civic actors track measurable change, improve local

found that, the year before the pandemic, the community deeply depended upon the rental community:

> In Los Angeles, housing affordability was a pressing issue before the start of the pandemic. According to 2019 data, 54% of L.A. County residents were renters, and over half of those renters were rent burdened. Further, 29% of all households were considered "severely rent burdened," paying more than half of their income towards rent and utilities.

Renter Vulnerabilities in Los Angeles, Neighborhood Data for Social Change, May 2021, https://bit.ly/3ObDq6g.

Moreover, a recent study by the Price Center for Social Innovation found that, pre-pandemic, South and Central Los Angeles households were making significant cutbacks on critical basic needs in order to pay rent. *Id.* "The study found that two-thirds of rent-burdened households cut back on food, half cut back on clothing, half cut back on entertainment or family activities, half deferred bill payments and/or took on more debt, one-third decreased their transportation costs, and one-fifth went without medicine or seeing a doctor." *Id.* (citing Jovanna Rosen *et al.*, *Rent Burden*, Price Center for Social Innovation, 2020)). When the eviction moratorium ended, these tenants were to find themselves in an even grimmer place.

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policies and programs, and ultimately advocate for a better quality of life within their communities." https://bit.ly/3AUFIU1.

Upon the conclusion of the eviction moratorium, rental-property owners—who had borne the public burden of providing uncompensated housing for tenants for so long—had to work to protect their property and investments by evicting non-paying tenants. Although the City could have counteracted the urgency of these evictions, its failure to compensate rental property owners when it had trampled upon their right to exclude had made simple financial survival the most pressing concern for many. At the same time, for fear of another round of government overreach, owners were withdrawing from the already tight rental housing market. Many of amici's members simply elected to cease renting properties at all. *See, e.g.,* Laurie S. Goodman and Susan Wachter, *Housing Policy: Part II. Lessons Learned from Rental Policies and Outcomes* in *Recession Remedies: Lessons Learned from the U.S. Economic Policy Response to COVID-19*, at p. 192 (Wendy Edelberg *et al.* eds. 2022), available at https://bit.ly/4hMynXq.

Like other eviction moratoria in cities across the country, Los Angeles' moratorium has produced a perfect storm of increasingly scarce housing and increasingly desperate prospective tenants. For policy reasons, the City's failure to justly compensate rental-property owners for taking their fundamental property rights has ultimately proven a disaster for tenants and landlords alike. This case presents an opportunity for the Court to correct course and ensure that even rental-property owners—an easy political target for too many state and local governments—are guaranteed the full protection of the Takings Clause.

CONCLUSION

Amici agree that the City of Los Angeles's oppressive eviction moratorium compelled rental-property owners to provide effectively-uncompensated public housing for a period of years. For too long, amici's members were prevented from removing nonpaying tenants in violation of the Takings Clause. Furthermore, amici agree that this petition provides a clean vehicle for resolving lower courts' repeated misinterpretation of *Yee*.

For these reasons and those stated in the petition, the Court should grant the petition.

Respectfully submitted,

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