No. 25-68

IN THE

Supreme Court of the United States

JAMES T. BALLARD,

Petitioner,

v.

THE CITY OF WEST HOLLYWOOD, THE CITY COUNCIL OF THE CITY OF WEST HOLLYWOOD, AND THE WEST HOLLYWOOD RENT STABILIZATION COMMISSION,

Respondents.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a municipality may transform temporary emergency rent restrictions and occupancy mandates adopted at the start of the COVID–19 pandemic into permanent rent control measures that expand benefits to tenants and the public at large at the expense of private property owners, without triggering scrutiny under the Takings and Due Process Clauses of the Fifth and Fourteenth Amendments of the U.S. Constitution.

2. Whether the denial of leave to amend, despite the viability of property claims for takings and due process violations, constituted an abuse of discretion under this Court's liberal standard for amendment under Federal Rule of Civil Procedure 15(a).

PARTIES TO THE PROCEEDING

Petitioner is James T. Ballard, plaintiff–appellant below.[1]

Respondent–defendants are the City of West Hollywood, the City Council of the City of West Hollywood, and the West Hollywood Rent Stabilization Commission, defendants–appellees below.

1. Under California law, a revocable trust is not a separate legal entity, allowing Ballard to proceed *pro se*. *See Boshernitsan v. Bach*, 61 Cal.App.5th 883, 891 (2021).

RELATED PROCEEDINGS

Ballard v. City of West Hollywood, No. 24–538, 2025 WL 618110 (9th Cir. Feb. 26, 2025).

Ballard v. City of West Hollywood, No. 2:23–cv–04367–FMO–AGR, 2024 WL 3593999 (C.D. Cal. Jan. 3, 2024).

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PETITION FOR WRIT OF CERTIORARI

Petitioner James T. Ballard respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the Ninth Circuit affirming the district court decision is unpublished and reproduced in App. A–1a. The opinion of the district court dismissing Petitioner's claims is unpublished and reproduced in App. B–7a.

JURISDICTION

This Court has jurisdiction under 28 U.S.C. § 1254(1). The Ninth Circuit entered its judgment of February 26, 2025. App. A–1a. A petition for rehearing or rehearing en banc was denied on April 17, 2025. App. C–20a. This petition is timely filed under Rule 13.1 of the Rules of this Court.

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

U.S. Constitutional Provisions

U.S. Const. amend. V: "nor shall private property be taken for public use, without just compensation."

U.S. Const. amend. XIV, § 1: "nor shall any State deprive any person of life, liberty, or property, without due process of law . . . "

Statutory Provisions

Cal. Civ. Code § 1954.52(c)(i): "An owner of real property as described in this paragraph may establish the initial and all subsequent rental rates for all existing and new tenancies in effect on or after January 1, 1999, if the tenancy in effect on or after January 1, 1999, was created between January 1, 1996, and December 31, 1998."

Relevant provisions of the West Hollywood, Cal., Rent Stabilization Ordinances are reprinted at App. 22a–72a.

INTRODUCTION

This petition challenges the dismissal with prejudice of Petitioner's complaint at the pleading stage under Federal Rule of Civil Procedure 12(b)(6) by the district court, as affirmed by the Ninth Circuit. Petitioner James Ballard asserts that a plausible path exists to amend his complaint and present a meritorious challenge to the West Hollywood Rent Stabilization Ordinance (the "WHRSO"), App. 36a, particularly as amended by Ordinance 20–1101U, adopted March 16, 2020, App. D–22a, Ordinance 20–1103U, adopted April 6, 2020, App. D–26a, and Ordinance 22–1194, adopted November 7, 2022, App. D–30a.

This litigation, brought by Ballard—owner of two modest rent-controlled apartment buildings in the City of West Hollywood (the "City")—alleges that the City, at the direction of the City Council of the City of West Hollywood and in conjunction with the West Hollywood Rent Stabilization Commission (the "Commission") (collectively, "West Hollywood"), transformed a temporary rent freeze and a temporary eviction moratorium, both

adopted at the beginning of the pandemic, into long-term financial benefits for tenants and the public at large at the expense of rent-regulated property owners after the health crisis had passed. Distilled down, the question is: How far can a city expand rent control to advance general socioeconomic policies before crossing constitutional property protections?

Ballard alleged in his complaint that these ordinances collectively violated his rights under the Takings and Due Process Clauses of the U.S. Constitution by: (1) retroactively stripping landlords of three years of accrued rent increases after the health crisis had passed; (2) arbitrarily capping city-wide rent increases at 3% to deny landlords a fair return; (3) compelling landlords to house tenants and unauthorized occupants, regardless of whether they paid rent, from March 2020 through March 2023; and, (4) repeatedly extending the rent freeze and the eviction moratorium to provide additional financial benefits and occupancy protections to tenants, even though by September 2021 the federal and state eviction restrictions had ended and the City had reopened for business, lifted shelter-in-place orders, and stopped enforcing social-distancing and mask mandates, thanks to vaccine availability starting in December 2020. *See* Document 1 and Exhibits 1–19, filed on filed 6/4/2023 with the United States District Court Central District Of California (Western Division—Los Angeles) in the Civil Dkt. For Case #: 2:23–cv–04367–FMO–AGR.

Ballard argues that these actions constitute both categorical and regulatory takings of core property rights and violate due process consistent with this Court's decisions in:

- *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 149 (2021) (Roberts, C.J.) ("Whenever a regulation results in a physical appropriation of property, a *per se* taking has occurred, and *Penn Central* has no place.")[2];

- *Eastern Enterprises v. Apfel*, 524 U.S. 498, 549 (1998) (Kennedy, J., concurring) ("The case before us represents one of the rare instances where the Legislature has exceeded the limits imposed by due process," emphasizing retroactivity is disfavored.); and

- *Duquesne Light Co. v. Barasch*, 488 U.S. 299, 308 (1989) (Rehnquist, C.J.) ("If the rate does not afford sufficient compensation, the State has taken . . . without paying just compensation and so violated the Fifth and Fourteenth Amendments.").

The categorical takings arise from the retroactive appropriation of vested rent increases and the mandate to house tenants, whether they pay rent or not, in violation of a property owner's right to exclude, as well as from the confiscation of rent increases and other rent-related losses arising from extensions of the rent freeze and the eviction moratorium, all without compensation. The due process violations arise from the retroactive application of a vague ordinance arbitrarily administered for general public purposes unrelated to pandemic relief or excessive rent increases. The regulatory takings claims are grounded in the denial of a fair return, and the lack of any nexus

2. Referencing *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978).

or proportionality between the City's policies and the burdens imposed on landlords.

The defined property interests supporting Ballard's claims include: (1) the right to exclude, control, and possess, inherent in property ownership; and (2) the statutorily defined annual general adjustment (AGA), a formulaic and rigid rent increase mechanism. WHRSO Ch. 17.36; App. D–48a. For decades, West Hollywood claimed annual adjustments ensured a "fair and just" return for landlords. *See* WHRSO § 17.04.020; App D–36a. West Hollywood cannot now simply dismiss the significance of the entitlement it created and skirt constitutional limitations.

In the courts below, West Hollywood categorically asserted that rent control laws "do not constitute unconstitutional takings . . . nor do they violate due process." *See* Dkt. 18, Page ID #410, ll.6–7. Ballard responded that these ordinances go well beyond permissible regulation. They function to appropriate, redistribute, and recharacterize private property rights under the guise of emergency response.

West Hollywood made a policy choice to place the full weight of pandemic housing burdens on landlords. When the health crisis passed, it did not relieve those burdens—but entrenched them—transforming temporary restrictions into permanent economic subsidies for tenants, consistent with its broader policy to reduce housing costs in real dollars over time for incumbent tenants, without consideration of the impact such policies have on landlords or private property rights. *See* Dkt. 1, # 12, Exhibit M RS Rpt. 2017–18, Page ID #197, *West Hollywood Needs Affordable Housing.*

This case ultimately presents a question of constitutional boundaries and regulatory balance. Ballard does not challenge rent regulation in the abstract. He challenges West Hollywood's choice to convert emergency health restrictions into long-term rent suppression, without just compensation or meaningful property protections, after years of pandemic restrictions and mandates. The reciprocal side to a rigidly defined and strictly enforced rent regulation regime that has been in place for decades is the reasonable expectation that: (1) modest, formulaic rent increases will not be confiscated, and (2) general rent increase limits will not be arbitrarily set so low as to deny a fair return. *See* Dkt. 1, Page ID #19–21, ¶25–26.

STATEMENT

Factual Statement

Unless otherwise noted, the following factual statement is based on allegations made in the complaint and supported by the attached exhibits. Dkt. 1 and Exhibits 1–19.

Temporary Emergency Ordinances at the Start of the Pandemic

In early 2020, the City adopted emergency pandemic ordinances affecting all owners of rent-regulated properties. These ordinances: (1) suspended the application of AGAs, (2) limited evictions for nonpayment of rent and breaches of the lease, and (3) curtailed landlords' control over occupancy. West Hollywood, Cal., Ordinance 20-1101U (Mar. 16, 2020), App. D–22a; West Hollywood, Cal.,

Ordinance 20-1103U (Apr. 6, 2020), App. D–26a. At the time, these sweeping restrictions were framed as tools to protect public health and safety, in alignment with federal, state, and local mandates during the COVID-19 lockdown.

The City repeatedly emphasized that: (1) all emergency measures were "temporary in nature and only intended to promote stability and fairness within the residential rental market in the City during the COVID-19 pandemic outbreak," and (2) the suspended AGAs would not be available until "60 days after the expiration of the local emergency." App. D–23a (§1.L); App. D–26a–27a, 29a (§1.O, §4, §4.A). Relief for landlords, in other words, was promised 60 days after the end of the health crisis.

Both Ordinances were adopted under the City's emergency police powers and acknowledged that "[t]he situation is unprecedented and evolving rapidly." App. D–23a (§1.K); App. D–26a (§1.N). It was a war against a virus—until science, medicine, and vaccines brought the health crisis under control in 2021.

Uninterrupted Accrual of Annual Rent Increases

Although the City froze rent increases, it did not halt the accrual of AGAs under WHRSO § 17.36.020–§ 17.36.030; App. D–48a–49a. The Rent Stabilization Commission continued to calculate and publish annual rent adjustments, each time expressly stating that the increase "cannot be applied until 60 days after the local emergency is lifted." App. D–29 (§4, §4.A). The announced adjustments were: 0.75% for 2020, 3% for 2021, and 6% for 2022. *See* Dkt. 1, Page ID #47, ¶65.

Despite a City Councilmember's 2020 recommendation that AGAs should cease accruing, the Commission's process remained unchanged from its inception in 1985. *See* Dkt. 1, Page ID #30–31, ¶40.

Temporary Limitations Codified as Permanent Restrictions

On November 7, 2022—well after the health crisis had abated—the City adopted Ordinance 22–1194. App. D–30a. This measure again affected all owners of rent-regulated properties and codified the emergency restrictions into permanent policy. It eliminated landlords' rights to apply AGAs for 2020–2022 and imposed a flat 3% annual cap on all future general rent increases. The City relied on a vague and arbitrary mechanism under Section 2 of the ordinance to limit the March 1, 2023 increase to 3% (the "Section 2 Increase"). App. D–32a; *See, e.g.*, Dkt. 1, Page ID #35, ¶44.

Ordinance 22–1194 functionally eliminated AGAs for 2020, 2021, and 2022 through a four-part mechanism by: (1) acknowledging the April 6, 2020 freeze; (2) justifying the reduced 3% rent increase cap based on its opposition to vacancy decontrol and the need for "certainty"; (3) interpreting the Section 2 Increase as an AGA; and (4) applying the reduced 3% annual rent increase cap to the anomalous Section 2 Increase to eliminate the suspended AGAs that the City had allowed to accumulate.

This approach eliminated the accumulated AGAs without directly acknowledging they could no longer be applied "60 days after the local emergency is lifted." It was legislation untethered from the structure and text

of the WHRSO. The Section 2 Increase did not meet the WHRSO's criteria for an AGA, as it was not tied to CPI or calculated by the Commission. By definition, the Section 2 Increase falls outside the bounds of what constitutes a lawful AGA and yet the City still applied the 3% AGA cap to the Section 2 Increase. West Hollywood implemented the 3% increase despite the ambiguity of the textual reference to "controls." App. D–32a, 48a, 53a.

West Hollywood has long argued that landlords are not entitled to profits and have no right to rent increases that keep up with inflation. The net result is that landlords' real dollar returns on occupied rental units diminish incrementally over time, especially when inflation exceeds 4% due to the reduced 3% annual rent increase cap. Increased operating expenses and the costs related to expanded tenant protections and maintaining aging buildings, only worsen this imbalance.

The City justified these confiscatory regulations under the guise of providing "certainty" to landlords. App. D–30a, §1.A. But the benefits—direct and substantial—flowed, and continue to flow, solely in one direction, from landlords to tenants. That financial transfer cost the City nothing.

Circumstances Had Already Changed

By late 2021, the circumstances that had justified emergency restrictions no longer existed. Vaccines had brought the health crisis under control. Businesses had reopened. The City had largely returned to normal. Nevertheless, West Hollywood extended pandemic-era restrictions into 2023, with impacts that will persist until

rents ultimately reset through vacancy decontrol, which typically takes years and, in many cases, decades. *See* Cal. Civ. Code §1954.52(c)(i); Dkt. 1, # 12, Exhibit M RS Rpt. 2017–18, Page ID #196 ("In the 21 years since vacancy decontrol has been in effect, 64% of West Hollywood apartments have turned-over [sic] at least once.").

In considering the balance between the rights and interests of landlords and tenants, it bears noting that neither the City nor the Commission collects the data necessary to assess the profitability of rental housing subject to the WHRSO. They also do not collect the data needed to compare returns on rent-regulated housing with businesses bearing similar capital requirements, risks, and operational burdens. *See* Dkt. 1, Page ID #39-40, ¶50-51. Thus, it is unclear how West Hollywood can evaluate whether landlords are receiving a just and fair return.

West Hollywood argued in the lower courts that it needed to eliminate the AGAs for 2020, 2021, and 2022 to halt the largest rent increase in City history, without acknowledging that the extensions of the rent freeze and the eviction moratorium caused the accumulation of AGAs. *See* Dkt. 18, Page ID #410, ll.15–16. Rather than transition out of the rent freeze in accordance with Ordinances 20–1101U and 20–1103U—and in alignment with federal and state action—the City instead delayed, studying the potential tenant impacts of lifting the freeze and the moratorium, and thereby increased the windfall to all tenants in rent-regulated units regardless of income.

Four Decades of Rent Control

West Hollywood's commitment to tenant protections and generalized rental benefits now spans more than four decades. Since its incorporation in 1984, the City has imposed strict regulations on landlords, enforced by civil and criminal penalties. Yet its vision remains one-sided, and West Hollywood continues to advocate for even more restrictive rent controls.

West Hollywood argues that: (1) AGAs provide landlords with a fair and reasonable rent increase annually, and (2) landlords may increase rents upon vacancy, consistent with California's prohibition on vacancy control. West Hollywood also asserts that landlords may use the individualized rent increase application process to recoup AGAs or address incremental rent suppression. However, the application process was designed to address property-specific imbalances due to capital improvements or unique conditions. It was never intended to serve as a substitute for the AGA. It is widely recognized as burdensome, expensive, inefficient, outdated, inconsistent, speculative, and accessible only to a very limited number of landlords. *See, e.g.*, Docket 1, #12, Ex. N, BAE Rpt. 2016, Page ID 212, 216, 231–32, 234, 236–37; Docket 1, #14, Ex. O, RSC Rpt. 2018, Page ID 276–77. More importantly, the application process also has no bearing on facial challenges. *Yee v. City of Escondido, Cal.*, 503 U.S. 519, 534 (1992).

Closer scrutiny reveals that the WHRSO's AGA process is statutorily rigid. "The increase shall be annually calculated by the Commission[]" at 75% of the CPI, now capped at 3%. WHRSO § 17.36.020; App.

D–48a. "The amount of the annual general adjustment shall be announced by the Commission on or before July first of each year . . . " WHRSO § 17.36.030; App. D–49a. Landlords may raise rents only once annually. WHRSO § 17.36.050; App. D–50a–51a. The City does not assess economic fairness based on operating costs or return on investment and it has never allowed any flexibility in the formula. Further, it does not carefully consider eleven objective economic factors as the ordinance in *Yee*, 503 U. S. at 524–525, mandated, or even the six objective economic factors and one tenant hardship factor allowed by the San Jose ordinance in *Pennell v. City of San Jose*, 485 U.S. 1, 13–14 (1988) ("We accordingly find that the Ordinance, which so carefully considers both the individual circumstances of the landlord and the tenant before determining whether to allow an *additional* increase in rent over and above certain amounts that are deemed reasonable, does not on its face violate the Fourteenth Amendment's Due Process Clause."). The AGA process is fixed, resolute, and unreasonable.

The 3% rent cap—before consideration of operating expenses—is 2% below the 5% rate that simpler and safer investments pay, as West Hollywood determined—after the filing of the complaint—by averaging the interest rates for savings accounts of five online FDIC-insured banks and rounding to the nearest one-tenth of one percent for interest due on security deposits in 2024 and 2025. See Security Deposit Interest Rate for security deposits held in 2023[3] and 2024.[4]

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3. https://www.weho.org/home/showpublisheddocument/58272/638399576075370000

4. https://www.weho.org/home/showpublisheddocument/60599/638677230679230000

U.S. District Court for the Central District of California

On January 3, 2024, the district court dismissed Ballard's complaint with prejudice. App. B–7a. It held that Ballard's claims were unripe and legally deficient, and it denied leave to amend.

Crucially, the court construed the claims solely as as-applied challenges and did not acknowledge the facial challenges pleaded in the complaint. Ballard was afforded no opportunity to argue the facial claims, as the court canceled oral argument after West Hollywood raised its finality and exhaustion arguments in its reply brief.

The court concluded that the rent increase application process had not been exhausted and that it was not futile, relying on the fact that Ballard had successfully used the process more than two decades earlier when he first bought and renovated the properties. The court did not engage with Ballard's allegations that the process had become ossified, burdensome, inaccessible to most landlords, and a cost-ineffective way to claw back the AGAs the City had confiscated. *See, e.g.*, Dkt. 1, Page ID #58-69, ¶ 82–99; WHRSO Ch.17.44; App. D–53a–72a. The court also did not address allegations that the individualized application process was a property-specific auxiliary—not a substitute—procedure under the WHRSO for increasing rents. *Id.*

The court was also not swayed by Ballard's contentions that physical takings were garbed as rent regulation, *Cedar Point*, 594 U.S. at 149, or that due process was violated through the retroactive application of a vague

ordinance administered arbitrarily for socioeconomic purposes divorced from any negative externalities. *See Eastern Enterprises*, 524 U.S. at 547–49. Instead, the court dismissed Ballard's due process claims, relying on the legislative nature of the ordinance.

U.S. Court of Appeals for the Ninth Circuit

Majority Panel

In a divided opinion, the Ninth Circuit affirmed. App. A–1a. The majority concluded that Ballard's federal takings and due process claims were unripe and that the complaint failed to plausibly allege a facial challenge. Citing *Sinclair Oil Corp. v. Cnty. of Santa Barbara*, 96 F.3d 401 (9th Cir. 1996), and *Washington State Grange v. Washington State Republican Party*, 552 U.S. 442 (2008), the panel ruled that the complaint did not specifically allege that the ordinances were unconstitutional in all, or at least almost all, applications—a threshold requirement for a facial challenge.

The majority panel resisted allegations and arguments that: (1) there was no daylight between the harms Ballard suffered and those suffered by every other landlord of rent-regulated property; and (2) Ballard, like every other landlord subject to the WHRSO, had a constitutionally protected property interest in AGAs, including the ones for 2020, 2021, and 2022.

The majority further failed to address why amendment would be futile, even when pressed by Ballard in his motion for rehearing or rehearing en banc. App. C–20a. It also upheld dismissal of procedural due process claims, relying

on *Hotel & Motel Ass'n of Oakland v. City of Oakland*, 344 F.3d 959 (9th Cir. 2003), despite arguments that West Hollywood disabled the rent increase mechanism and failed to consider whether the rent restrictions provided private property owners with a fair and just return on their rental properties.

Partial Dissent by Judge Bumatay

Judge Bumatay dissented in part. App. A–6a. While he agreed that the complaint failed to state a facial claim, he emphasized that leave to amend should be granted. Citing *Moss v. U.S. Secret Serv.*, 572 F.3d 962 (9th Cir. 2009), he rejected the majority's conclusion that amendment would be futile.

He also argued—citing *Hacienda Valley Mobile Ests. v. City of Morgan Hill*, 353 F.3d 651 (9th Cir. 2003)—that facial challenges are exempt from the finality requirement under *Williamson Cnty. Reg'l Plan. Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), and contended that the district court—not the Ninth Circuit—should have considered the facial claim in the first instance.

REASONS FOR GRANTING THE WRIT

Rent Control Ordinances That Appropriate Vested Property Interests, Impose Occupancy Requirements, and Arbitrarily Cap Rent Increases Transgress Constitutional Limits

Justice Thomas recently observed that "the constitutionality of [rent control regimes] . . . is an important and pressing question," adding that "in an

appropriate future case, we should grant certiorari to address this important question." *74 Pinehurst LLC v. New York*, 218 L. Ed. 2d 66 (Feb. 20, 2024) (Statement of Justice Thomas respecting denial of certiorari). His concern echoes Justice Scalia's dissent in *Pennell*, 485 U.S. at 19: "There is no reason thus to shield alleged constitutional injustice from judicial scrutiny. I would therefore consider appellants' takings claim on the merits."

In *Pennell*, the Court considered a facial takings challenge to a San Jose rent control provision that allowed the city to consider a tenant's financial hardship in denying or reducing rent increases above 8%. Ultimately, however, the Court did not decide whether the ordinance constituted a facial taking. Instead, it dismissed the takings claim as unripe because the provision had never been applied. *Id.* at 10. The Court emphasized that the ordinance provision in question had never been applied and there was no evidence how it might be applied. *Id.* Thus, *Pennell* did not reject the constitutional challenge—it deferred it.

Justice Scalia's dissent stressed the potential abuse in shifting economic housing burdens to landlords to offset tenant hardship and warned that such ordinances effect an uncompensated taking. *Id.* at 20.

This petition presents an update on the very scenario *Pennell* left unresolved. Here, Ballard alleges concrete, city-wide harm suffered by all owners of rent-regulated properties, based on: (1) the retroactive elimination of accrued AGAs; (2) the rigid 3% rent increase cap untethered from statutory text and function, and from inflation, operating costs, expectations, and risks; and (3)

the prolonged eviction moratorium and the extended rent freeze, after the public health crisis had passed.

These actions implicate constitutional violations through:

- Time: the extensions of the rent freeze and the eviction moratorium; the delay in lifting restrictions; the retroactive confiscation of AGAs; the accrual of rent increases; and the loss of income and value over time.

- Space: the mandates to house and not evict tenants and other occupants—regardless of rent payment or lease violations—who otherwise could be excluded from private rental property.

- Dimension: the complete elimination of AGAs; the arbitrary reduction of the annual rent increase limit; and the magnitude of government interference in the context of a strictly enforced rent regulations that extracts economic benefits and property rights from private property owners to benefit most of the residents in the City.

The intersection of these violations impacts the very shape of constitutional concepts of private property and the limits on municipal police power.

The Annual General Adjustment Is a Distinct Property Interest Around Which the WHRSO Is Built

This Court has made clear that identifying the relevant property interest is the threshold inquiry in both

takings analysis and due process analysis. *See Murr v. Wisconsin*, 582 U.S. 383, 395 (2017); *Eastern Enterprises*, 524 U.S. at 544, 549 (1998) (Kennedy, J., concurring); *id.* at 556 (Breyer, J., dissenting) ("The question involved–the potential unfairness of retroactive liability–finds a natural home in the Due Process Clause, a Fifth Amendment neighbor.")

Ballard's claims arising from the eviction moratorium are based on interference with possessory control and his right to evict tenants for breaching their leases. His claims arising from rent confiscations around the rent freeze—the retroactive confiscation of AGAs, the extension of the rent freeze after the health emergency had passed, and the arbitrary reduction of the rent increase limit to 3%—are based on the statutorily created property interest in each AGA. WHRSO Ch. 17.36; App. D–48a–52a. It is a property interest that mirrors the rent increase considered in *Pennell*, 485 U.S. at 4–8, 15–16. However, the WHRSO, unlike the rent control ordinance considered in *Pennell*, grants no discretion to the Rent Stabilization Commission to withhold or recalibrate an AGA, thus deepening his "legitimate claim of entitlement." *The Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 576–78 (1972). The AGA process is a non-discretionary, formula-based rent increase that produces a specific rent increase. As such, each AGA constitutes a discrete, government-created entitlement. Each is calculated annually through a formula tied to inflation, published publicly, and applied citywide without administrative discretion. *Id.* Each is framed as the means by which the City ensures landlords receive no more than a fair return. WHRSO § 17.04.020; App. D–37a. For decades, AGAs have functioned as a statutory compact—one relied on by property owners and investors alike.

The legal framework governing what qualifies as a constitutionally protected property interest supports this view. This Court has repeatedly held that property interests arise from existing rules and understandings stemming from independent sources such as state law. *Murr*, 582 U.S. at 397. In *Phillips v. Washington Legal Found.*, 524 U.S. 156, 164–65, 172 (1998), the Court held that interest on trust accounts belonged to the client, not the state, because state law attached ownership rights to the principal and its earnings. *See* also *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 162–64 (1980).

The Court has also recognized constitutionally protected property rights in interest earned on lawyers' trust accounts, raisins, liens, patents, air space, and strawberry fields, in challenges raising classic categorical takings claims. *Brown v. Legal Found. of Washington*, 538 U.S. 216, 233–35 (2003) (interest on IOLTA accounts); *Horne v. Dep't of Agric.*, 576 U.S. 350, 360–61 (2015) (raisins); *Armstrong v. United States*, 364 U.S. 40, 48 (1960) (liens); *James v. Campbell*, 104 U.S. 356, 358 (1881) (patents); *United States v. Causby*, 328 U.S. 256 (1946) (air space above a chicken ranch); and *Cedar Point*, 594 U.S. at 144 (strawberry fields).

For four decades, West Hollywood has woven the WHRSO into a comprehensive and reticulated statute that is framed around maintaining strict control over rent increases. Through definition, function, procedure, administration, and enforcement, West Hollywood has treated each AGA as a separate and distinct property interest. It has been the entitlement promised to landlords by West Hollywood to ground the City's refrain that it provides owners of rent-regulated properties with a fair

and just annual return. The City even brought each and every annual general adjustment to the attention of the district court in advancing its motion to dismiss. *See, e.g.*, Docket 27, # 1 Attachment.

West Hollywood made the distinction between the concepts of rent and rent increases when it first adopted the WHRSO in 1985 and has institutionalized that structure since through strict and rigid enforcement. *See* WHRSO § 17.08.010; App. D–45a–46a. That tenacity and the commitment is why Ballard expects that he should, at minimum, be able to apply each AGA that the City calculated as fair and just. That was the balance the City promised and that is why West Hollywood should not be able to back away from the distinct and separate property interest it created.

West Hollywood arduously disagrees. The Constitution, however, demands balance, and when a rent control regime is strictly enforced and mechanically administered, the consequence is a reasonable expectation that the modest annual rent increases will not be confiscated and will not be arbitrarily reduced to advance priorities so detached from protecting tenants from excessive rent increases and the COVID–19 virus that they can easily be characterized as public subsidies.

Under our Constitution, however, property rights are shaped by established and reasonable objective expectations. Each AGA fits neatly within that perspective. AGAs have never been discretionary grants. Instead, they have always been formulaic, reliable, and integral to the City's strictly regulatory regime. The California Supreme Court has affirmed that landlords possess a constitutional

right to a fair return, and that rent stabilization mechanisms must respect that right both procedurally and substantively. *See Kavanau v. Santa Monica Rent Control Bd.*, 16 Cal. 4th 761, 771–73, 778 (1997); *Fisher v. City of Berkeley*, 37 Cal. 3d 644, 683 (1984) ("[A]lthough a fixed profit amount may produce a reasonable or fair return on investment for low-risk investments such as bonds . . . investment in rental units contemplates a higher risk and hence, in times of high inflation and when viewed in the long term, demands more than mere maintenance of an existing profit amount."); *Cotati All. for Better Hous. v. City of Cotati*, 148 Cal. App. 3d 280, 294–95 (1983) (rent regulations must ensure a reasonable profit to landlords).

To retroactively nullify the accrued AGAs for 2020, 2021, and 2022, and cap future increases below rates of return on simpler, safer investments is to confiscate distinct and identifiable property interests. As this Court explained in *Horne*, 576 U.S. at 360 (Roberts, C.J.), a physical appropriation of property gives rise to a *per se* taking, regardless of the government's reasons.

Further, West Hollywood cannot redefine away constitutionally protected interests to escape liability. *See Tyler v. Hennepin Cnty., Minnesota*, 598 U.S. 631, 638 (2023) (Roberts, C.J.) (citing *Cedar Point*, 594 U.S. at 155) (Property rights "cannot be so easily manipulated."). West Hollywood is bound by the statutory structure it built. Arguing that AGAs are not constitutionally protected property interests is an argument for overturning *Pennell* and permitting the unchecked expansion of rent control.

Circuits Divided on Whether an Eviction Moratorium Invades the Right to Exclude and Deepens Takings Violations

The right to exclude is "one of the most essential sticks in the bundle of rights that are commonly characterized as property." *Cedar Point*, 594 U.S. at 150 (citation omitted). Yet for nearly three years, West Hollywood prevented landlords from removing tenants and unauthorized occupants even if they failed to pay rent or violated the terms of the lease. That is a compelled occupation, not regulation.

The majority panel below definitively affirmed the district court's ruling, which held that the defects in Ballard's claims are incurable and the complaint "lacks merit entirely." On this, however, there is a clear split in the circuits. The Eighth Circuit in *Heights Apartments, LLC v. Walz*, 30 F.4th 720, 724, 732–735 (8th Cir. 2022), and the Federal Circuit in *Darby Dev. Co. v. United States*, 112 F.4th 1017, 1035–36 (Fed. Cir. 2024), both emphasized that the one-year eviction moratoria extinguished core property rights without compensation and determined that such restrictions—even though substantially shorter than those at issue here—can support *per se* takings claims. Both courts reasoned that the eviction moratoria deprived landlords of their right to exclude tenants in breach of their lease obligations.

By contrast, the Ninth Circuit and the Second Circuit continue to take a much harder line against landlords. In *Cmty. Hous. Improvement Program v. City of New York*, 59 F.4th 540, 552 (2023), the Second Circuit held, "[i]t is well settled that limitations on the termination of

a tenancy do not effect a [physical] taking so long as there is a possible route to an eviction." Cert. denied, 144 S. Ct. 264 (2023). *See GHP Mgmt. Corp. v. City of Los Angeles, California*, No. 24-435, 2025 WL 1787663 (U.S. June 30, 2025) (Statement of Justice Thomas respecting denial of certiorari) (Ninth Circuit expressly acknowledged the split in authority) (citation omitted).

West Hollywood's argument that it merely regulated landlord-tenant relations disregards the rule of *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 448 (1982): When the government authorizes a physical occupation of property . . . a *per se* taking has occurred without regard to the public interests the regulation may serve or the size of the taking. In *Loretto*, the permanent installation of cable wires constituted a taking. *Id.* at 421. Here, landlords were compelled to continue housing occupants until West Hollywood placed an end date on the eviction moratorium, which finally came after months of study and years of delay. In the Ninth Circuit, as in the Second Circuit, when there is no recourse, there is no urgency to revoke tenant benefits–especially when those benefits cost the City nothing.

Rent Control Is Not Immune From Facial or Categorical Challenges

The facial challenge permitted in *Pennell* cannot be described as an outlier. 485 U.S. at 4–8, 15–16. This Court in *Cedar Point*, 594 U.S. at 156–158, reaffirmed the guidance of *Koontz v. St. Johns River Water Management Dist.*, 570 U.S. 595, 614–15 (2013) (Alito, J.), that "a *per se* [takings] approach is proper" when the government confiscates a specific and identifiable property interest. As

Chief Justice Roberts explained, the "access regulation amounts to simple appropriation of private property." *Cedar Point*, at 162.

This Court has repeatedly recognized that financial value tied to a discrete property interest—such as funds or income derived from land use—falls squarely within the protection of the Takings Clause and may support categorical challenges. *Koontz*, 570 U.S. at 613–14; *id.* 625 (Kagan, J., dissenting).

Here, the amendments to the WHRSO were applied universally to all rent-regulated properties in the City. They were categorical in both effect and application. They confiscated vested entitlements, increased financial burdens, and stripped owners of basic property interests without compensation and without reasonable consideration of the impacts on property owners.

West Hollywood, however, relied on the Court's decision in *Yee*, 503 U.S. at 519, to argue in the lower courts that rent control regulations are categorically immune from takings liability. But *Yee* is not a shield to the challenge here. That case involved a facial challenge to a rent control ordinance that did not: (1) impose a rent freeze, (2) retroactively eliminate accrued AGAs, or (3) command owners to house tenants whether they paid rent or not. *Yee* considered whether Escondido's reliance on eleven objective factors in analyzing rent increase requests by mobile home parks constituted a physical taking where landlords had voluntarily entered the rental market and retained the right to exit it. *Id.* at 524–525. The Court found no *per se* taking because landlords retained meaningful economic use and legal avenues for reasonable

relief. *Id.* at 524–32. The case was not dismissed due to ripeness, finality, or exhaustion.

The WHRSO, by contrast, offers none of the procedural or substantive protections outlined in *Yee*. Now, decades later, West Hollywood has inverted the optimism of *Yee* to eliminate three years of AGAs, replace a decades-old inflation-indexed formula with an arbitrary and fixed 3% rent increase, and permanently cap all future AGAs at an arbitrary 3%. This legislation was adopted by West Hollywood as it continued to compel landlords to house tenants after the health emergency had passed.

In contrast, *Yee* emphasized that landlords were not deprived of their ability to evict. 503 U.S. at 528. The difference is striking as West Hollywood continued the eviction moratorium and the rent freeze while studying the impact of lifting the moratorium on tenants. Thus, while *Yee* upheld an incremental rent control ordinance that carefully considered objective factors related to the economics of operating a mobile home park, West Hollywood stripped away even the modest fairness and balance that *Yee* deemed essential.

West Hollywood's interpretation of *Yee*—that it provides a blanket exemption from takings liability no matter how extreme the restrictions—cannot withstand scrutiny.

Temporary Interference with Property Rights Constitutes a Constitutional Violation

The Takings Clause of the Fifth Amendment, applied to the States through the Fourteenth, does

not differentiate between permanent and temporary intrusions on property. A taking that lasts days or decades still constitutes a taking, and the government must pay just compensation for the period during which private property is commandeered for public ends. As this Court emphasized in *First English Evangelical Lutheran Church of Glendale v. Cnty. of Los Angeles*, 482 U.S. 304, 318 (1987), "temporary takings . . . are not different in kind from permanent takings." *See Cedar Point*, 594 U.S. at 153; *Arkansas Game & Fish Comm'n v. United States*, 568 U.S. 23, 32–33 (2012).

This doctrine is not theoretical. It applies fully to the facts here. West Hollywood's moratorium and freeze were not brief regulatory delays, nor necessitated by rebuilding or procedural review. They were extended mandates imposed by ordinance, stripping rental property owners of economic benefits and possessory control. These are precisely the types of actions that require just compensation. *See Alabama Assn. of Realtors v. Dept. of Health and Hum. Servs.*, 594 U.S. 758, 765 (2021) (per curiam) ("[P]reventing [landlords] from evicting tenants who breach their leases intrudes on one of the most fundamental elements of property ownership–the right to exclude"); *id.* at 766 ("our system does not permit agencies to act unlawfully even in pursuit of desirable ends").

Importantly, the City elected to transition out of the rent freeze and the eviction moratorium almost two years after it had reopened for business by slashing the rent increase limit to 3% and retroactively confiscating three years of vested AGAs. The unfairness is conspicuous. The health crisis had passed and, even if it had not, national emergencies do not negate constitutional protections.

United States v. Pewee Coal Co., 341 U.S. 114, 115 (1951) (Government seizure of mine during World War II for 5½ months a clear taking); *Kimball Laundry Co. v. United States*, 338 U.S. 1, 3–4, 7, 16 (1949) (compensation required for commandeering laundry plant for near four years); *United States v. Petty Motor Co.*, 327 U.S. 372, 374, 380–81 (1946) (government compensation required for leaseholders for a two-plus-year temporary taking); *United States v. Gen. Motors Corp.*, 323 U.S. 373, 375 (1945) (government required to pay short-term rental value for occupying part of a building leased by a parts company for one year); *Int'l Paper Co. v. United States*, 282 U.S. 399, 407–08 (1931) (government ordered to pay compensation for authorizing a third party to interfere with a mill's water rights by diverting the river's full water flow for ten months).

Tahoe–Sierra Pres. Council v. Tahoe Reg'l Plan. Agency, 535 U.S. 302 (2002), often cited to shield temporary regulatory intrusions, is inapposite. That case dealt with a moratorium on development during planning—a future-facing, general freeze on new use—not the government's interference with existing income streams and eviction rights. Here, Ballard was stripped of active, vested property entitlements, not merely asked to wait for a short period before exercising prospective ones.

Moreover, the government's burden is particularly acute where the deprivation is superimposed on a group that is already subject to strict and burdensome regulation. West Hollywood placed the full weight of inflation and rent losses that accrued from the health crisis on rent-regulated property owners. West Hollywood did not spread the economic pain across the community.

Instead, it selected a class of private citizens and required them to subsidize the majority of the City's residents. This offloading of public burdens onto private parties for general public purposes lies at the very heart of takings jurisprudence. *See Armstrong*, 364 U.S. at 49 ("The Fifth Amendment's guarantee . . . was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.").

The Ninth Circuit's failure to recognize plausible temporary and permanent takings claims, despite the confiscation of entitlements and interference with possessory control, conflicts with Supreme Court precedent and effectively exempts rent control from the constitutional protection. The majority panel erred by leaning into doctrines of finality and exhaustion that have been overturned or narrowed. *Knick v. Twp. of Scott, Pennsylvania*, 588 U.S. 180, 191–95, 197–98 n.6 (2019) (Roberts, C.J.) (improper to recast an exhaustion requirement as a component of finality), and *Pakdel v. City & Cnty. of San Francisco*, 594 U.S. 474, 479–80 (2021) (per curiam) ("finality" should not be used to impose procedural roadblocks once the government has firmly and definitively imposed a condition or restriction on property).

Appropriations of AGAs and Confiscatory Rent Ceilings Violate the Fair Return Doctrine and the Takings and Due Process Clauses

Rent control, like public utility rate regulation, is bounded by constitutional limits. Those limits include the right of a regulated party to earn a fair return on investment—sufficient to cover operational expenses,

attract capital, and yield a profit commensurate with the risk of the enterprise and its investment requirements. This Court articulated the "fair return" doctrine nearly a century ago in *Bluefield Waterworks & Imp. Co. v. Pub. Serv. Comm'n*, 262 U.S. 679, 690–92 (1923), reaffirmed it in *Fed. Power Comm'n v. Hope Natural Gas Co.*, 320 U.S. 591, 599–603 (1944) (a fair rate of return—meaning a return that is both sufficient "to attract capital" and "commensurate with returns on investments in other enterprises having corresponding risks"), and applied it most recently in *Duquesne*, 488 U.S. at 307–08.

California courts, including the California Supreme Court in *Kavanau*, 16 Cal. 4th at 771–73, have recognized that this standard applies to rent regulation. A rent control regime is unconstitutional if it fails to ensure that landlords can recover their costs and earn a return on their property. A rent control law that does not permit landlords to obtain a just and reasonable return is invalid. *Birkenfeld v. City of Berkeley*, 17 Cal. 3d 129, 165 (1976); *Fisher*, 37 Cal. 3d at 683–84; *Cotati Alliance*, 148 Cal. App. 3d 280, 294–95.

Yet West Hollywood's regime fails that standard. By eliminating AGAs for the years 2020, 2021, and 2022 and then capping future increases at 3%, the City has created a regulatory environment where landlords cannot attract capital or earn a return commensurate with the risks of property ownership. In fact, West Hollywood takes an already constitutionally suspect rent control scheme and presses it further across the line. Collectively, the limits ensure returns significantly below those of safer and simpler investments.

The math is clear, particularly as West Hollywood has never calculated an AGA to provide landlords with more than a fair return. As such, the elimination of AGAs necessarily provides landlords with less than a fair return. Landlords who once received 75% of inflation-adjusted increases received none for three years, while property costs—utilities, insurance, maintenance, and taxes—rose dramatically. This is not reasonable regulation. And the fact that the confiscatory rental rates may reset when a property becomes vacant does not mean the confiscations never occurred. The confiscations simply restart with each new tenancy and recur across all rent-regulated properties.

Even with this expansion, there is continued resistance to hearing rent control cases and the long-simmering split among state and federal courts on whether modern rent control schemes satisfy constitutional fair return standards. *See, e.g., Guar. Nat. Ins. Co. v. Gates*, 916 F.2d 508, 509–10, 515–16 (9th Cir. 1990); *Michigan Bell Tel. Co. v. Engler*, 257 F.3d 587 (6th Cir. 2001); *Jersey Cent. Power & Light Co. v. FERC*, 810 F.2d 1168, 1177–78, 1184 (D.C. Cir. 1987) (en banc) (Bork, J.) (presented allegations that required reasoned examination, not summary dismissal). Some courts, including many in California, have diluted the doctrine to the point of meaninglessness, insisting that regulation is valid so long as it does not threaten insolvency. But that is not, and never has been, the constitutional standard.

The fair return doctrine demands that property remain economically viable under regulation. It protects against schemes that, while facially neutral, functionally extinguish the economic value of ownership. West

Hollywood's regime violates both that doctrine and the constitutional foundations it rests upon. Certiorari is warranted to reaffirm those protections and to prevent cities from disguising expropriation as policy.

West Hollywood Cannot Extract Benefits Without a Nexus and Rough Proportionality

The City's actions fail under nexus and proportionality requirements that govern land-use regulation. In a fully transactional context, the unconstitutional conditions doctrine bars the government from conditioning the grant of a discretionary benefit on the surrender of a constitutional right. As this Court held in *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 837 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374, 391 (1994), the Takings Clause is violated when property is demanded as a condition of a land-use permit unless there is an "essential nexus" and "rough proportionality" between the government's demand and the effects of the proposed use.

At their core, these two limits relate to the government's extraction of land or money to offset negative externalities caused by the activities of property owners, such as developers burdening traffic, sewers, or the environment. Here, there are no negative externalities because landlords are simply continuing to provide rental housing in accordance with existing laws. West Hollywood's argument that vacancy decontrol is a negative externality caused by landlords may be in line with the City's philosophy, but it is not a negative consequence of providing housing under California law. Landlords are bringing rents up to market when units become lawfully vacant. The very point of vacancy decontrol was to address

the early excesses of local vacancy control laws, but that has not tempered local rent control excesses. West Hollywood, like a number of other municipalities, rejects balance.

There is simply no nexus to an externality that justifies the confiscation of AGAs or the annual suppression of general rent increases. West Hollywood has simply become too comfortable with confiscatory control of rent-regulated properties to let it escape constitutional scrutiny.

West Hollywood's commitment to affordable housing cannot overcome the nexus and proportionality restrictions that limit the extent to which municipalities can reach into the pockets of private property owners. It is even less defensible when the regulatory purpose is to insulate tenants from the general economic consequences of the pandemic by placing all cost increases related to regulated-rental housing on private property owners. In that light, what started as measures to combat a health emergency was studied and delayed into a general social benefit program through the mechanics of extending the rent freeze and the eviction moratorium and then eliminating AGAs that were merely suspended.

The City's confiscation of accrued rent increases and denial of meaningful rent increases, in pursuit of a social good, is no different from requiring a landowner to dedicate land or money without justification. *See Koontz*, 570 U.S. at 614. Here, unlike developers, landlords are preserving the very status quo West Hollywood desires—stable, long-term rental housing. The City's extractions from landlords are not because they cause harm, but

because they exist and the money they generate is easily reached. That flips the logic of exaction jurisprudence on its head and invites redistributive policies untethered from constitutional constraints.

Regulatory Takings Claims Plausible Under Penn Central's Three-Prong Test

West Hollywood's actions can also be framed plausibly as a regulatory taking under *Penn Cent.*, 438 U.S. at 123–25, which considers: (1) economic impact; (2) interference with reasonable investment-backed expectations; and (3) the character of the government action.

Here, the impact is measured not only in the confiscation of three consecutive years of AGAs, the arbitrary reduction of rent increases through the 3% limit, and the losses from the extended eviction moratorium, but also by compounding losses over time. Every four years, assuming inflation remains stable at or below 4%, landlords lose the equivalent of one full AGA, based on an annual 25% inflationary loss. When inflation exceeds 4% those losses accelerate. This, in turn, creates conditions ripe not only for market stagnation but also for a broader breakdown in enterprise, innovation, development, conservation, and maintenance within the City's private rental housing market due to the devaluation of rent-regulated properties and the increased cost of capital needed to build, buy, and operate rental housing.

The interference with investment-backed expectations is equally stark. For decades, West Hollywood defined and grounded the WHRSO around the modest, inflation-tied AGA, which was designed and employed to provide

landlords with an annual return. It is a measure and a limit that implicates a multitude of small and large decisions related to the financing, acquisition, disposition, and management of rental housing. Suppressing that measure makes it more expensive and less attractive to provide rental housing in the City. Here, West Hollywood is not only harming private property owners, the value of regulated rental property, the rental market, and the long-term availability of housing for tenants—it is also eroding broader confidence in our system of government and in the constitutional guarantees that protect private property.

The character of the government action also weighs against West Hollywood and in favor of a taking. The City is not regulating nuisance, pollution, or congestion. It is redistributing income from landlords to tenants through occupancy mandates and rent suppression based on a municipal policy that holds rental properties up as a funding source for general public programs. This is particularly true when the government acts retroactively and arbitrarily and when it seeks to justify those acts based on a recharacterization of the past. That is not regulation—it is appropriation by another name. *See Pension Ben. Guar. Corp. v. R.A. Gray & Co.*, 467 U.S. 717, 730 (1984).

In sum, West Hollywood fails all three prongs. Its claim that "certainty" offsets the confiscation of annual rent increases only underscores how imbalanced considerations have become under rent control in the City.

Due Process Was Violated Through Arbitrary, Retroactive, and Vague Regulations and Administration

California law recognizes that rent control violates due process when it deprives landlords of a fair return, imposes arbitrary limits, lacks fairness, employs unfair procedures, or fails to consider the burdens imposed on rental housing providers. *See, e.g., Kavanau*, 16 Cal.4th at 761; *Fisher*, 37 Cal. 3d at 687 ("the magnitude of the job to be done" necessitates a workable, non-burdensome procedure). West Hollywood violates all five. *See Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 543 (2005) (distinct constitutional functions of takings and due process protections).

The details of those violations bear repeating. First, the City imposed a 3% cap without empirical consideration of landlord hardship. Second, it relied on ambiguity to restrict the Section 2 Increase to 3%. Third, it retroactively eliminated AGA entitlements for 2020, 2021, and 2022 through the silent interplay of Section 2 and Section 3 of Ordinance 22–1194. App. D–32a–33a. Fourth, it relied on doctrinal connections so distant they are better characterized as grants to tenants, including: (a) certainty offsets confiscation, and (b) vacancy decontrol justifies the confiscation of AGAs. Fifth, it confiscates defined and distinct private property rights to fund general socioeconomic benefits that the City could not—or would not—fund itself.

Collectively, these actions combine to define an arbitrary exercise of municipal power, particularly after West Hollywood began by claiming that: (a) the rent freeze was a temporary health measure necessary to combat

COVID–19, and (b) AGA entitlements for 2020, 2021, and 2022 were merely suspended "until 60 days after the end of the urgency." App. D–23a (§1.L); App. D–26a–27a, 29a (§1.O, §4, §4.A).

As Justice Gorsuch warned, due process prohibits bait-and-switch tactics, especially where government dangles a remedial path only to revoke it later. *Off. of United States Tr. v. John Q. Hammons Fall 2006, LLC*, 602 U.S. 487, 518 (2024) (Gorsuch, J., dissenting). That is precisely what occurred here. West Hollywood promised the rent freeze and the eviction moratorium were only temporary pandemic measures—until they weren't. The temptation of reaching deeper into an easily accessible funding source proved too much.

CONCLUSION

Ballard has outlined a detailed-and-plausible theory of constitutional injury. He has identified multiple property interests—the right to rent increases, the right to exclude, the right to a fair return—and presented specific allegations of harm tied to concrete legislative and administrative actions. If those allegations are incomplete, the proper remedy is amendment, not dismissal. Fed. R. Civ. P. 15(a). This Court has long held that pleadings need only state a plausible claim, not prove it in full. *See Tyler*, 598 U.S. at 637 ("that is enough for now"); *Ashcroft v. Iqbal*, 556 U.S. 662, 680–81 (2009).

In this case, the Court should intervene to reaffirm that plausible constitutional property claims deserve adjudication on the merits, not dismissal on procedural grounds. Granting leave to amend here would reaffirm the

foundational principle that no person may be deprived of property without due process of law, and that government may not take property—temporarily or permanently—without just compensation. Moreover, this Court can provide the needed clarification without immediate and systemic disruption to any major rent regulation regime.

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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