No. 23-935

In the Supreme Court of the United States

GENE GONZALES AND SUSAN GONZALES, HORWATH FAMILY TWO, LLC, AND THE WASHINGTON LANDLORD ASSOCIATION,

Petitioners,

v.

GOVERNOR JAY INSLEE AND STATE OF WASHINGTON,

Respondents.

On Petition for a Writ of Certiorari to the Supreme Court of Washington

BRIEF OF THE CATO INSTITUTE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

Anastasia P. Boden
Counsel of Record
Thomas A. Berry
Nathaniel Lawson
CATO INSTITUTE
1000 Mass. Ave., N.W.
Washington, DC 20001
(202) 216-1414
aboden@cato.org

April 17, 2024

QUESTION PRESENTED

Whether an ordinance that compels the possession of property by an unwelcome occupant is a categorical physical taking, as the Eighth Circuit held in *Heights Apartments, LLC v. Walz*, 30 F.4th 720 (8th Cir. 2022), or a permissible regulation of use under *Yee v. City of Escondido*?

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INTEREST OF *AMICUS CURIAE*[1]

The Cato Institute is a nonpartisan public policy research foundation founded in 1977 and dedicated to advancing the principles of individual liberty, free markets, and limited government. To that end, Cato's Robert A. Levy Center for Constitutional Studies publishes books and studies, conducts conferences, produces the annual *Cato Supreme Court Review*, and files amicus briefs.

This case interests Cato because it involves the application of the Takings Clause to government subsidy programs and implicates the right to exclude—arguably the most fundamental strand in property's "bundle of rights."

[1] Rule 37 statement: All parties were timely notified of the filing of this brief. No part of this brief was authored by any party's counsel, and no person or entity other than *amicus* funded its preparation or submission.

SUMMARY OF ARGUMENT

Property rights are necessary for economic prosperity, and the right to exclude is the most fundamental aspect of property rights. Unfortunately, the Supreme Court of Washington misinterpreted this Court's precedent and held that a law infringing on the right to exclude does not require just compensation. Too many other courts have made the same error. *See* Pet. at 15–23. If this Court does not step in and correct this mistaken interpretation, many more laws undermining the right to exclude will be enacted, to devastating economic and personal effect.

In March of 2020, the State of Washington imposed an emergency order responding to the threat of COVID-19. The order prohibited landlords from evicting tenants for nonpayment, expired leases, or any other reason unless the tenant presented "a significant and immediate risk to the health, safety, or property of others" or unless the landlord wished to personally occupy or sell the property. Pet. at 2–4.

The state justified these orders as necessary to allow tenants to shelter in place. The state viewed homelessness as a vector for spreading COVID-19 and believed layoffs due to COVID-19 would hamper the ability of many people to pay rent.[2] *See* Pet. App. at 4a–6a.

Petitioners own rental properties in Washington that were covered by the emergency orders. They sued,

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[2] In fact, layoffs were largely due to *government* shutdowns intended to slow the spread of the disease, not due to private market forces. *See, e.g.*, Victoria Taft, *The Number of Small Businesses Destroyed by COVID Lockdowns Will Astound You*, PJ MEDIA (June 13, 2021), http://tinyurl.com/5n892yhp.

claiming that these eviction moratoriums constituted uncompensated takings under the Fifth and Fourteenth Amendments. But the Supreme Court of Washington rejected Petitioners' takings claims based on its interpretation of *Yee v. City of Escondido*, 503 U.S. 519 (1992). *See* Pet. App at 15a–16a. According to the Supreme Court of Washington, *Yee* held that the government can change the terms and duration of a tenant's occupation of a property without creating a taking, so long as the tenants *originally* came onto "the landlords' property with the landlords' permission." *See id.* at 15a. The court distinguished *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063 (2021), in which this Court held that a law granting union organizers access to private agricultural property was a taking. The Supreme Court of Washington dismissed the relevance of *Cedar Point* because the property owners in that case had never given any permission for the union organizers to come onto their property.

The petition clearly lays out the flaws in the Supreme Court of Washington's opinion. The Supreme Court of Washington completely misinterpreted *Yee*, which merely stated that an ordinance setting a maximum rent was not a physical taking. *See* Pet. at 14. The plaintiffs in *Yee* were not trying to evict any of the tenants. *See id.* The ordinance allowed the plaintiffs to evict tenants for many reasons, including nonpayment of rent, violation of the law, expiration of the lease, or an owner's wish to change the use of the property. *See Yee*, 503 U.S. at 524. When the Court in *Yee* stated that the rent control ordinance was not a taking because the landlords voluntarily rented their property to the tenants, *see id.* at 527–28, it was in a context where only price controls were at issue. The Court was not saying that an owner's voluntary grant

of a limited, conditional tenancy allows the government to extend the duration and terms of that tenancy without limit and without just compensation. Such a holding would contradict this Court's long line of physical takings jurisprudence, from *Kaiser Aetna* and *Loretto* to *Cedar Point*. *See* Pet. at 24–29.

Amicus submits this brief to emphasize that the Supreme Court of Washington's misinterpretation of *Yee* has serious practical consequences. Local governments enacted numerous eviction moratoriums during the pandemic. These moratoriums allowed tenants to continue occupying rental properties regardless of missed payments, bad behavior, or the owner's desire to change the use of the property. And general rent control laws similarly restricting evictions have proliferated in recent years. Such laws and ordinances have reduced property values and caused many small-time landlords to struggle to meet their bills. The rental housing industry is worth $3.4 trillion and employs 17.5 million jobs, *see infra* Part III.A, so these added costs weigh down an already struggling economy. This financial impact on landlords has caused a reduction in available rental housing, perversely *increasing* rents for tenants and leading to the gentrification of cities. It has also caused landlords to neglect necessary maintenance, harming the quality of housing that tenants receive. Given that more than a third of housing units are occupied by renters, a huge proportion of the population suffers when rents increase and the quality of rental housing decreases.

For all these reasons, it is vital that property owners have the ability to vindicate their rights to bring takings challenges to eviction moratoriums. This

Court should grant certiorari and clarify that *Yee* does not shield the orders at issue from takings challenges.

ARGUMENT

I. PROTECTION OF PROPERTY RIGHTS IS NECESSARY FOR PROSPERITY.

Strong protection of property rights is critical for economic prosperity. One cannot live, let alone live well, without obtaining goods. And people generally will not spend time, effort, and resources producing goods unless they benefit from that expenditure. As Aristotle said: "[T]hat which is common to the greatest number has the least care bestowed upon it. Every one thinks chiefly of his own, hardly at all of the common interest; and only when he is himself concerned as an individual." ARISTOTLE, POLITICS 57 (Benjamin Jowett trans., Clarendon Press 1916).[3] The primary critics of property rights, such as Karl Marx, denied this fundamental aspect of human nature. *See* GERALD P. O'DRISCOLL JR. & LEE HOSKINS, POLICY ANALYSIS NO. 482, PROPERTY RIGHTS: THE KEY TO ECONOMIC DEVELOPMENT 4–5 (2003). Property rights ensure that people get the benefit of their expended time, effort, and resources.

Our Founding Fathers understood the importance of protecting property rights. John Adams proclaimed that "[p]roperty must be secured or liberty cannot exist." John Adams, *Discourses on Davila*, *in* 6 WORKS OF JOHN ADAMS 280 (Charles Francis Adams ed., 1851). Alexander Hamilton declared that "one great obj[ect] of Gov[ernment] is the personal protection and security of property." I MAX FARRAND, RECORDS OF THE

[3] Available at https://tinyurl.com/47stsnju.

FEDERAL CONVENTION OF 1787, at 534 (1937). And James Madison famously wrote that "the first object of government" is the "protection of different and unequal faculties of acquiring property." THE FEDERALIST NO. 10, at 78 (James Madison) (Clinton Rossiter ed., 1961).

This understanding was evident in the law of the founding era. In 1776 George Mason wrote the Virginia Declaration of Rights, which helped inspire the Declaration of Independence, other state constitutions, and the federal Bill of Rights. *See The Virginia Declaration of Rights*, NAT'L CONST. CTR. (last visited Sept. 14, 2023).[4] In its first article, the declaration stated that "all men . . . have certain inherent rights, of which . . . they cannot, by any compact, deprive or divest their posterity; among which [is] . . . the means of acquiring and possessing property." Memorandum by R. Carter Pittman, The Virginia Declaration of Rights: Its Place in History (Oct. 28, 1955).[5] In 1795, Supreme Court Justice William Patterson, riding circuit, wrote that "the right of acquiring and possessing property, and having it protected, is one of the natural, inherent, and unalienable rights of man." *Vanhorne's Lessee v. Dorrance*, 2 U.S. 304 (C.C.D. Pa. 1795). Even Adam Smith stated in a 1760s lecture in Glasgow that "[t]he first and chief design of every system of government is to . . . prevent the members of society from incroaching on one another's property, or seizing what is not their own . . . to give each one the secure and peacable

[4] Available at https://tinyurl.com/37py34t9.

[5] Available at https://tinyurl.com/y6mjs727. This statement remains in the Virginia Constitution today, except that "among which are" is replaced by "namely." *See* VA. CONST. art. I, § 1.

possession of his own property." ADAM SMITH, LECTURES ON JURISPRUDENCE 5 (R. L. Meek, D. D. Raphael & P. G. Stein eds., 1978).

The Founders were particularly interested in protecting property rights from "oppressive majorities, special interests, and government officials." ILYA SOMIN, THE GRASPING HAND: *KELO V. CITY OF NEW LONDON* & THE LIMITS OF EMINENT DOMAIN 42 (2015). James Madison, author of the Fifth Amendment Takings Clause, feared that property rights would be undermined by the majority under republican government. *See* JENNIFER NEDELSKY, PRIVATE PROPERTY AND THE LIMITS OF AMERICAN CONSTITUTIONALISM 16–66 (1990). Gouverneur Morris agreed, stating that "[e]very man of observation had seen in the democratic branches of the State Legislatures, . . . [and] in Congress . . . excesses ag[ainst] . . . private property." FARRAND, *supra*, at 512. Morris feared not just that a majority would seize the property of the wealthy minority, but that the wealthy would use their influence to threaten the property rights of the poor. *See* SOMIN, *supra*, at 42. These fears led to the ratification of the Fifth Amendment Takings Clause.

The Founders were correct to prioritize the protection of property rights. A 2001 study measured the correlation of 14 potential explanatory variables with Gross National Income per capita to determine which variables best explain economic prosperity, and the variable with the highest level of significance was property rights. *See* Richard Roll & John Talbott, *Why Many Developing Countries Just Aren't* 4 (UCLA Anderson Sch. of Mgmt., Finance Working Paper No. 19-01, 2001). Two other studies also found a significant

relationship between stronger property rights protections and higher income per capita. *See* Germinal G. Van, Property Rights and Income Inequality 8–12 (Jan. 2021), MPRA Paper 105195;[6] Timothy Besley & Maitreesh Ghatak, *Property Rights and Economic Development*, *in* 5 HANDBOOK FOR DEVELOPMENT ECONOMICS 4554–56 (Dani Rodrik & Mark R. Rosenzweig eds., 2010). Numerous studies have found that countries with laws more strongly protecting shareholder and creditor assets have bigger and broader capital markets and more economic growth overall. *See* Artem Joukov, Overstaying Their Welcome: Unevictable Tenants, Rents, and Home Prices 6 (Sept. 25, 2023) (unpublished manuscript).[7] The 2007 edition of *The Economic Freedom of the World* found that the countries in the top quartile of economic freedom had an average GDP per capita of $26,013, versus an average GDP per capita of $3,305 for the bottom quartile. *See* Walter E. Williams, *Economics and Property Rights*, FOUND. FOR ECON. EDUC. (Jan. 1, 2008). Similarly, the top quartile had an economic growth rate of 2.25% compared to 0.35% for the bottom quartile. *See id.* Given that a 10% increase in a country's average income corresponds to a 20–30% decrease in the poverty rate, *see* DEP'T FOR INT'L DEV., U.K., GROWTH: BUILDING JOBS AND PROSPERITY IN DEVELOPING COUNTRIES 3 (2008), this provides a real and profound benefit to individual well-being.

The benefits of economic freedom are seen even when comparing places with similar language, culture,

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[6] Available at https://tinyurl.com/3xptu33n.

[7] Available at http://tinyurl.com/mbw3d5e4.

and traditions. South Koreans have, on average, at least 17 times the income of North Koreans. *See* O'DRISCOLL & HOSKINS, *supra*, at 2. Finland and Estonia are practically neighbors, their languages share a common root, and they have similar cultures and values. Yet while their standard of living was approximately the same in the 1930s, in 2000, after Estonia suffered fifty years of Communist rule, the average Finn earned from 2.5 times to over seven times what the average Estonian earned. *See id.* East Germany was also significantly poorer than West Germany after suffering Communist rule. *See id.* Communist China's real per capita GDP in 2000 was less than $4,000. *See id.* Taiwan, which split from China during the Communist revolution, had a real per capita GDP of more than $17,000. *See id.* Hong Kong, which had ended a century of British rule just a year before, had a real per capita GDP of $25,153. *See id.* In every case, the nation that better respected property rights had greater prosperity.

Overall, as Adam Smith said, "commerce and manufactures can seldom flourish long in any state . . . in which people do not feel themselves secure in the possession of their property." ADAM SMITH, THE WEALTH OF NATIONS 862 (Edwin Cannan ed., Random House, Inc. 1937) (1776).

II. THE RIGHT TO EXCLUDE IS FUNDAMENTAL TO PROPERTY RIGHTS.

The right to exclude is the *sine qua non* of property. Thomas W. Merrill, *Property and the Right to Exclude*, 77 NEB. L. REV. 730, 730–31 (1998). The rights to use, transfer, include, and dispose of property "are dependent upon and derive from the right to exclude, which is indispensable." Thomas W. Merrill, *Property*

and the Right to Exclude II, 3 BRIGHAM-KANNER PROP. RTS. CONF. J. 1, 25 (2014) [hereinafter Merrill, *Right to Exclude II*]. Blackstone described the "right of property" as "that sole and despotic dominion which one man claims and exercises over the external things of the world, in total exclusion of the right of any other individual in the universe." 2 WILLIAM BLACKSTONE, COMMENTARIES *2. Blackstone's definition traces its lineage to Roman conceptions of the right. *See* Juan Javier Del Granado, *The Genius of Roman Law from a Law and Economics Perspective*, 13 SAN DIEGO INT'L L.J. 301, 316 (2011) ("Roman property law typically gives a single property holder a bundle of rights with respect to everything in his domain, to the exclusion of the rest of the world.").

Put another way, the ancient and fundamental understanding of "the right to property" holds "[t]he notion of exclusive possession" to be "implicit in the basic conception of private property." RICHARD A. EPSTEIN, TAKINGS: PRIVATE PROPERTY AND THE POWER OF EMINENT DOMAIN 63 (1985). "Exclusion lies at the root of property because the institution of property is dependent on possession, and exclusion lies at the root of possession." Merrill, *Right to Exclude II*, *supra*, at 14. Thus, a physical taking "is perhaps the most serious form of invasion of an owner's property interests. To borrow a metaphor, the government does not simply take a single 'strand' from the 'bundle' of property rights: it chops through the bundle, taking a slice of every strand." *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 435 (1982).

This Court has repeatedly and correctly acknowledged the centrality of the right to exclude as the fundamental element of property. Over a century

ago, this Court determined that regulations of property, in addition to confiscations, constitute takings if they "go[] too far." *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922). Approximately half a century later, the Court held that whether a regulation went too far would be determined by an "essentially ad hoc, factual inquir[y]" that balances multiple factors. *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 124 (1978).

The year after *Penn Central*, this Court in *Kaiser Aetna v. United States* held that the physical invasion of property is a "government intrusion of an unusually serious character." *Loretto*, 458 U.S. at 433. The case involved an owner making improvements to his private property that turned the property from fast lands[8] into a "navigable water of the United States." *See* 444 U.S. 164, 170 (1979). Under federal law, property owners of navigable waters of the United States are subject to a navigational servitude prohibiting them from excluding the public from those waters. *See id.* at 165–66. Furthermore, there were prior cases holding that federal navigational servitudes often did not constitute a taking requiring compensation. *See id.* at 175–77. However, the Court refused to extend those precedents to the case at hand, instead holding that the federal navigational servitude was similar enough to the seizure of an easement in the property to constitute a taking. *See id.* at 177–80.

This Court further protected the right to exclude in *Loretto*, holding that a permanent physical occupation

[8] "Fast Land" is land above the high water mark, the owner of which must receive just compensation when government projects flood the land. *See Fast Land*, USLEGAL (last visited Feb. 8, 2024), http://tinyurl.com/2s3tavjz.

constitutes a *per se* taking. *See* 458 U.S. at 441. The Court rejected the application of an ad hoc inquiry under *Penn Central*, finding that all permanent physical occupations of property are takings, even "minor" ones. *See id.* at 421, 427. According to the Court, "[p]roperty rights in a physical thing have been described as the rights 'to possess, use and dispose of it.'" *Id.* at 435 (quoting *United States v. General Motors Corp.*, 323 U.S. 373, 378 (1945)). Permanent physical occupations are "the most serious form of invasion of an owner's property interests" because they "destroy[] each of these rights." *Id.* This Court later confirmed that *Loretto*'s *per se* rule also applies to chattel property. *Horne v. Dep't of Agric.*, 576 U.S. 351, 357–58 (2015).

Most recently, in *Cedar Point*, the Court emphasized the importance of the right to exclude when it determined that a state law requiring agricultural employers to allow union organizers onto their property for up to three hours per day for 120 days per year effected a *per se* physical taking. *See* 141 S. Ct. at 2072.

Chief Justice Roberts, writing for the Court, clarified that "Government action that physically appropriates property is no less a physical taking because it arises from a regulation." *Id.* As a result, the "essential question" to determine whether a *per se* physical taking has occurred is "whether the government has physically taken property for itself or someone else—by whatever means—or has instead restricted a property owner's ability to use his own property." *Id.* The Chief Justice further explained that "[w]henever a regulation results in a physical

appropriation of property a *per se* taking has occurred, and *Penn Central* has no place." *Id.*

Additionally, the duration and size of appropriations are not relevant to the determination of whether *per se* physical takings have occurred; they "bear[] only on the amount of compensation" due. *Id.* at 2074. The fundamental problem with the California access law was that "[r]ather than restraining the growers' use of their own property, the regulation appropriate[d] for the enjoyment of third parties the owners' right to exclude." *Id.* at 2072.

If property rights are crucial for prosperity, the right to exclude is crucial for property rights.

III. THE VIOLATION OF THE RIGHT TO EXCLUDE HAS HARMFUL CONSEQUENCES.

When the government weakens property rights with laws infringing on the right to exclude, the result is economic harm and ruined livelihoods.

A. Violating the Right to Exclude Has Caused Economic Harm.

The COVID-19 eviction moratoriums were not the first laws to infringe on the right to exclude, although they were among the most severe. Some areas have previously had rent control laws with restrictions on evictions. *See* Rebecca Diamond, *What Does Economic Evidence Tell Us About the Effects of Rent Control?* BROOKINGS INST. (Oct. 18, 2018).[9] Analysis of the effects of those laws has shown that they cause more harms than benefits.

[9] Available at http://tinyurl.com/3w797b25.

In 1994, San Francisco passed a major rent control expansion. *See id.* Those who were tenants at the time of its enactment saved between $2,300 and $6,600 a year and were 19% less likely to subsequently move. *See* Diamond, *supra*; Edmund Andrews, *Rent Control's Winners and Losers*, STANFORD BUS. (Feb. 2, 2018).[10] However, later tenants paid approximately 5% more in rent, largely because the number of rent-controlled housing units declined by 25% and the number of housing units overall declined by 5%. *See* Andrews, *supra.* Owners of rent-controlled buildings were 8% more likely to convert the buildings to condos, which were not covered under the law. *See* Diamond, *supra.* As a result, residents of the rent-controlled neighborhoods had at least 18% *more* income than residents of non-rent-controlled neighborhoods, meaning that rent control actually *increased* gentrification rather than helping poor communities. *See id.*

The same year, Cambridge, Massachusetts, voted to abolish its rent control law. *See id.* As a result, the formerly rent-controlled properties increased in value by 45%, roughly making up for the 40+% the rents on those properties had been *below* the market rate when the law was in force. *See id.* Furthermore, non-rent-controlled properties neighboring the rent-controlled properties *also* increased in value after the law was abolished. *See id.* This means that the rent control law had not only been decreasing the value of the landlords' properties but those of everyone in the area. Rent control hurt not only landlords but property owners in general.

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[10] Available at http://tinyurl.com/at7s47pd.

New York City also has rent control, and in 2019 the city banned rent increases made to fund property improvements. The explicit goal was to prevent the type of "gentrification" that San Francisco and other cities have seen. *See* Howard Husock, *Rent Control 'Shabbifying' NY's Housing as Owners Feel the Squeeze*, N.Y. POST (May 5, 2023).[11] As a result, nearly 50,000 apartment units now sit vacant because they lack the expensive renovations necessary to comply with building codes. *See 'Ghost Apartments' are Ghastly, Needless Bane on the City*, N.Y. POST (Nov. 16, 2022).[12] Furthermore, the quality of non-vacant apartments decreased—a third of rent-controlled apartments have rodents, nearly double the rate of unregulated apartments. *See* Husock, *supra*. Rent-controlled apartments also have twice as many leaks and toilet and elevator breakdowns, and three times as many heating breakdowns and mold infestations. *See id.* And the law did not even truly prevent gentrification, as 22% of rent-stabilized tenants have incomes of $100,000 or more. *See id.*

St. Paul, Minnesota, passed rent control in 2021. *See* Kenneth R. Ahern & Marco Giacoletti, *Robbing Peter to Pay Paul? The Redistribution of Wealth Caused by Rent Control* 1 (Nat'l Bureau Econ. Rsrch., Working Paper No. 30083, 2023). The measure ended up reducing property values overall by 6–8%, and rental property values by an additional 6% compared to owner-occupied properties. *See id.* at 2. This cost the city $1.47 billion in property value and caused a 4% shortfall in expected property tax revenue, which is

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[11] Available at http://tinyurl.com/2r64mbkr.

[12] Available at http://tinyurl.com/5dysy55t.

the main source of revenue for the city and school district. *See id.* at 3. The cost to landlords was substantially larger than the benefit to tenants. *See id.* at 5. Additionally, the main beneficiaries of the rent control measure were wealthy tenants, not poor tenants. *See id.* at 4. Given that landlords respond to rent control by abusing loopholes, neglecting maintenance, or removing properties from the market, low-income tenants only suffer further. *See id.* at 1.

Laws infringing on landlords' right to exclude have a huge impact on the national economy. The rental housing industry is worth $3.4 trillion and employs 17.5 million jobs. *See* Brenda Richardson, *The Pros And Cons Of Rent Control For Landlords And Tenants*, FORBES (Mar. 23, 2023).[13] More than a third of housing units are occupied by renters. *See* Ahern & Giacoletti, *supra*, at 1. Given the severe housing shortage that is currently driving up rental prices[14] and an economy that three-quarters of Americans say is poor,[15] no one benefits from policies that make it uneconomical to provide rental housing.

B. Violating the Right to Exclude Has Destroyed Livelihoods.

The increased costs to landlords from such policies don't just hurt big corporations. The majority of landlords are individual investors. *See* Diana Olick,

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[13] Available at http://tinyurl.com/3j5765uf.

[14] *See* Jennifer Ludden, *Housing is Now Unaffordable for a Record Half of All U.S. Renters, Study Finds*, NPR (Jan. 25, 2024), http://tinyurl.com/4mjs7er6.

[15] *See* Cora Lewis, *Many Americans Say Their Household Expenses are Outpacing Earnings This Year, AP-NORC Poll Shows*, AP (Oct. 27, 2023), http://tinyurl.com/3t6m4ned.

'The Eviction Moratorium is Killing Small Landlords,' Says One, as Ban is Extended Another Month, CNBC (June 25, 2021).[16] Such "mom-and-pop landlords" own a majority of single-family housing, which constitutes half of rental housing and 77% of small building units. *See* Anna Bahney, *Landlords are Running Out of Money. 'We Don't Get Unemployment'*, CNN BUSINESS (Dec. 17, 2020);[17] Natalie Campisi, *What Mom-and-Pop Landlords Can Do to Relieve Eviction Ban Pressure*, FORBES ADVISOR (Nov. 2, 2022).[18] A little under half of all rental housing in total is owned by such landlords. *See* Abby Vesoulis, *How Eviction Moratoriums are Hurting Small Landlords—And Why That's Bad for the Future of Affordable Housing,* TIME (June 11, 2020).[19] A third of these landlords are retired and rely on rents for their income. *See* Campisi, *supra*.

In June 2019, Louis DiPasquale rented out the home he bought for his son because his son was on deployment with the army. *See* Kristin Thorne, *Long Island Small Landlords Struggling to Survive Amid Eviction Moratorium*, ABC7NY (Mar. 30, 2021).[20] His tenant did not pay the full amount in February 2020, so he moved to evict her. But then the pandemic hit, the courts closed, and the state issued an eviction moratorium. *See id.* Under the ban, tenants did not have to pay rent so long as they attested that they were experiencing financial hardship due to the pandemic, even without any evidence of such hardship. *See id.*

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[16] Available at http://tinyurl.com/yxk8hxua.

[17] Available at http://tinyurl.com/yyd756bh.

[18] Available at http://tinyurl.com/4m8wnkva.

[19] Available at http://tinyurl.com/4dypykn8.

[20] Available at http://tinyurl.com/4rd5zzht.

Louis found videos of his tenant vacationing in other states. *See id.* Because of the ban, Louis lost $32,000 and his son, back from deployment, was unable to move into the home purchased for him. *See id.*

In the 1960s, Greta Arceneaux was a mother of two going through a divorce with a low-paying secretarial job. *See* Vesoulis, *supra*. Hoping to support her family, she took out a loan and tore down her home to build a five-unit apartment complex. *See id.* The resulting rental money helped her to put her kids through college, buy a new home, and save for her retirement. *See id.* In 2020 she was 81, but her retirement funds went "down the tubes" due to a COVID-19 eviction moratorium. *Id.* Because of the moratorium, Greta had $15,000 in unpaid rent and zero government assistance to help pay her maintenance expenses and other bills, including her mortgage. *See id.* And new building codes required her to pay at least $60,000 by the end of the year for earthquake prevention reinforcement. *See id.* While Greta felt sorry for the troubles her tenants faced due to the pandemic, she did nothing wrong herself and yet was forced to take on the tenants' burden without government aid. *See id.* The $2 trillion CARES Act, which was passed in part to help landlords, merely removed caps on their ability to write off net operating losses, which benefited big businesses but not mom-and-pop landlords like Greta. *See id.*

An estimated 9.2 million renters were behind on rent by the end of 2020, by an average of $5,400 for those who lost their jobs. *See* Bahney, *supra*. Many landlords are having trouble paying their bills, both for maintenance issues such as trash removal, heating maintenance, and plumbing breakdowns, and for basic

things like real estate taxes and mortgages. *See id.* Many of these landlords only purchased their rental properties in the last five years and are fully leveraged, and so do not have the cash or equity to get loans. *See id.* These landlords who cannot cover their costs with rental fees are likely to sell their properties. That is bad news for low-income tenants, because the purchasers are most often either families who will convert the apartments to personal housing or large investment groups who are more likely to renovate and increase the rent. *See* Vesoulis, *supra.*

Neither landlords nor tenants benefit from laws taking away landlords' right to exclude.

CONCLUSION

For the foregoing reasons, and those described by the Petitioners, this Court should grant the petition.

Respectfully submitted,

Anastasia P. Boden
Counsel of Record
Thomas A. Berry
Nathaniel Lawson
CATO INSTITUTE
1000 Mass. Ave., N.W.
Washington, DC 20001
(202) 216-1414
aboden@cato.org

April 17, 2024