No. 25-5029

UNITED STATES COURT OF APPEALS
FOR THE NINTH CIRCUIT

MELVIA HARRIS; ROBERTA KNIGHTEN,

Plaintiffs-Appellants,

v.

CITY OF LOS ANGELES,

Defendant-Appellee,

STRATEGIC ACTIONS FOR A JUST ECONOMY,

Intervenor-Defendant-Appellee.

On Appeal from the United States District Court for the
Central District of California,
No. 5:24-cv-02679

REPLY BRIEF FOR PLAINTIFFS-APPELLANTS

RICK RICHMOND
LARSON LLP
444 S. Flower Street
30th Floor
Los Angeles, CA 90071

PAUL D. CLEMENT
Counsel of Record
ANDREW C. LAWRENCE
MITCHELL K. PALLAKI
CLEMENT & MURPHY, PLLC
706 Duke Street
Alexandria, VA 22314
(202) 742-8900
paul.clement@clementmurphy.com

Counsel for Plaintiffs-Appellants

February 10, 2026

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Cases

Statutes

Other Authorities

INTRODUCTION

Not even 261 pages of briefing from Defendants City of Los Angeles and Strategic Actions for a Just Economy (SAJE) and their amici can obscure the reality that the provisions challenged here are unconstitutional. The Supreme Court made clear in *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021), that a *per se* violation of the Takings Clause occurs when the government prevents property owners from excluding third parties from their properties. The City has committed such *per se* takings thrice over with the "Fair Market Rent" (FMR) Eviction Restriction, 4% Rent-Increase Cap, and Relocation-Fee Requirement. Defendants cannot escape those conclusions through rote citations to obviously distinguishable cases like *Yee v. City of Escondido*, 503 U.S. 519 (1992), and *FCC v. Florida Power Corp.*, 480 U.S. 245 (1987), or by making strained comparisons between Plaintiffs' private residences and the shopping mall in *PruneYard Shopping Center v. Robins*, 447 U.S. 74 (1980). In all events, Plaintiffs have advanced viable regulatory-takings arguments under the test announced in *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978), and Defendants' contrary view rests on an understanding of *Penn Central* that would convert it into a government-always-wins test. Defendants also offer no persuasive defense of the City's equal-protection and First Amendment violations. And while their desire to avoid the merits on many of Plaintiffs' claims is understandable, their procedural objections are all meritless.

ARGUMENT

I. The FMR Eviction Restriction Violates The Takings Clause.

A. The FMR Eviction Restriction Effects a *Per Se* Taking.

The first question here is whether FMR Eviction Restriction effects a *per se* taking. *See* Op.Br.28-31. The answer is plainly yes, and Defendants cannot evade that result by burying their responses deep in their briefs behind procedural objections that do not even implicate this argument. *See* LA.Br.43-54; SAJE.Br.24-25, 28-40. As the Supreme Court has admonished, "[t]he right to exclude is 'one of the most treasured' rights of property ownership," *Cedar Point*, 594 U.S. at 149, 152, so "the right to compensation is triggered" when government "physically appropriat[es]' property or otherwise interfere[s] with the owner's right to exclude others from it," *Sheetz v. Cnty. of El Dorado*, 601 U.S. 267, 274 (2024). The FMR Eviction Restriction has caused just that sort of interference: It has eliminated evictions for landlords like Plaintiffs who have defaulting tenants unless the unpaid rent exceeds the City's "fair market rent" threshold—a threshold that often greatly exceeds the tenants' actual City-controlled rent obligations (as it does here). *See* L.A. Mun. Code §151.09(A)(1). That is a *per se* taking.

Defendants concede that the FMR Eviction Restriction has interfered with Plaintiffs' right to exclude, but contend that it "d[oes] not effect a *per se* taking." LA.Br.43 (formatting altered); *see* SAJE.Br.23-24. To support that dubious proposition, Defendants (like the district court) rely on the Supreme Court's decision

in *Yee*, deeming it "dispositive." LA.Br.47; *see* SAJE.Br.25-26. That is wishful thinking. As Defendants remarkably never acknowledge, "the laws at issue in *Yee*"—*viz.*, mobile-home-residency laws—"expressly *permitted* eviction for nonpayment of rent." *Darby Dev. Co. v. United States,* 112 F.4th 1017, 1035 (Fed. Cir. 2024); *see Yee*, 503 U.S. at 524 ("[P]ark owner[s] may terminate a mobile home owner's tenancy" for "nonpayment of rent."). A decision involving a legal regime that allowed landlords to evict defaulting tenants self-evidently does not dispose of a case where the proverbial exits are blocked and the right to exclude overridden. Other courts have held as much, *see Darby Dev.*, 112 F.4th at 1035; *Heights Apartments, LLC v. Walz*, 30 F.4th 720, 733 (8th Cir. 2022), and no precedential decision has ever embraced Defendants' contrary theory.[1]

The City nevertheless urges the Court to extrapolate from *Yee* a sweeping rule that the government may freely interfere with property owners' right to exclude and still avoid a *per se* taking whenever they initially "invited" others onto the property on specific (and limited) terms. LA.Br.45-47. That would introduce a revolution in property law and force every property owner to think twice before granting time-limited interests or licenses or parting with any property interest short of fee simple. As the Federal Circuit recently explained when rejecting the identical argument from

[1] The City (but not SAJE) invokes this Court's nonprecedential decision in *GHP Management Corp. v. City of Los Angeles*, 2024 WL 2795190 (9th Cir. May 31, 2024). *See* LA.Br.47-48.

the federal government, "just because tenants (or other occupiers of property) were at one point 'invited' does not mean that their continued, government-compelled occupation cannot … be treated as a physical taking." *Darby Dev.*, 112 F.4th at 1036. If a homeowner invites a friend over for dinner, neither the guest nor the government can force the homeowner to let the dinner guest occupy the guest bedroom over the homeowner's objection. Any such rule would ignore bedrock property law—and lead to far fewer dinner invitations. The same principles apply to tenants: A landlord may invite a tenant to stay in a particular unit on the condition that he pays full rent, but the government cannot allow the tenant to stay if he flouts that obligation (unless the government is prepared to pay just compensation). *See* Restatement (Second) of Torts §168 (1965) ("A conditional or restricted consent to enter land creates a privilege to do so only in so far as the condition or restriction is complied with."); *cf. McLeran v. Benton*, 14 P. 879, 883 (Cal. 1887) (tenant staying in violation of lease qualifies as "intruder or trespasser").

Yee and other cases are consistent with the proposition that an initial invitation does not foreclose a *per se* taking. Although *Yee* involved tenants whom the plaintiffs had initially "invited," the Supreme Court declared that "[a] different case would be presented were the statute … to compel a landowner over objection to rent his property or to refrain in perpetuity from terminating a tenancy." 503 U.S. at 528, 532-33, 539. That statement is inexplicable "if a previous voluntary invitation (by

itself) controlled the analysis." *Darby Dev.*, 112 F.4th at 1036; *see Cwynar v. City & Cnty. of S.F.*, 109 Cal.Rptr.2d 233, 249 (Ct. App. 2001) (similar). And the City's initial-invitation-is-dispositive theory also cannot explain *Loretto v. Teleprompter Manhattan CATV Corp.*, as that case involved the "grant[]" of an initial invitation too. 458 U.S. 419, 421 (1982). The City tellingly offers no response.

For its part, SAJE concedes that an "initial invitation" is *not* sufficient to foreclose a *per se* taking. SAJE.Br.38. SAJE thus offers a competing interpretation of *Yee*, claiming that it actually "found that there was no physical takings due to the presence in that case of *both* the owners' initial invitation, *and* the owners' right to evict in order to change the use of the land" (and that both conditions exist here). SAJE.Br.38. That theory fares no better. After all, the Supreme Court expressly indicated in *Yee* that if the law there had "effect[ed] a physical taking," the ability to change the use of the land by "ceasing to rent" would not matter: "[A] landlord's ability to rent his property may not be conditioned on his forfeiting the right to compensation for a physical occupation." 503 U.S. at 531-32. Here, the FMR Eviction Restriction *has* effected a physical taking by precluding eviction for nonpayment—an issue not addressed in *Yee*. The City thus cannot avoid paying just compensation based on SAJE's theory that Plaintiffs can simply cease operating as landlords—a theory that the Supreme Court has derided as "wrong as a matter of law." *Horne v. Dep't of Agric.*, 576 U.S. 350, 365 (2015).

Perhaps recognizing that *Yee* cannot carry them to the finish line, Defendants turn to *Florida Power*. But *Florida Power*—which addressed the FCC's regulation of the prices utility companies could charge cable companies to run TV cables along utility poles, *see* 480 U.S. at 247-49—is irrelevant too. Here, Plaintiffs are precluded by the FMR Eviction Restriction from terminating tenancies for nonpayment of rent and are compelled to continue renting to defaulting tenants whose fixed leases have expired. *Florida Power* involved no such dynamic. It instead involved voluntary pole-attachment agreements and cable companies that actually paid their regulated fees. That is why the Court expressly did "not … decide" whether the FCC would have engaged in a *per se* taking if it "required utilities, over objection, to enter into, renew, or refrain from terminating pole attachment agreements" so as to "prevent the exclusion of the cable companies." *Id.* at 251 n.6; *see Darby Dev.*, 112 F.4th at 1035 n.17.

Defendants next shift to *PruneYard*, which they also describe as "decisive." SAJE.Br.31; *see* LA.Br.46. The district court apparently thought otherwise, as it never invoked *PruneYard* when addressing Plaintiffs' takings claims. That is unsurprising: In *Cedar Point*, the Supreme Court stated that *PruneYard*—which implicated a shopping center that "welcom[ed] some 25,000 patrons a day"—stood only for the limited proposition that the right to exclude is not necessarily taken when the government imposes "[l]imitations on how a business *generally open to the*

public may treat individuals." 594 U.S. at 156-57 (emphasis added). Plaintiffs' properties are about as different from shopping malls as possible and are *not* "generally open to the public." Plaintiffs (like all landlords) "generally *exclude* the general public and welcome only tenants and their invitees, subject to the terms of a lease (including its payment terms)." ER-77.¶95. The Supreme Court found *PruneYard* inapposite in *Cedar Point* when the agricultural employers selectively allowed hundreds of employees onto the premises. *See* 594 U.S. at 144-45, 156-57. *PruneYard* is inapposite here *a fortiori.*

With nothing to show from *Yee*, *Florida Power*, or *PruneYard*, Defendants contend that "longstanding background restrictions on property rights" support the FMR Eviction Restriction. LA.Br.52; *see* SAJE.Br.31-36. No such longstanding background restrictions exist, which explains why other courts and litigants have failed to uncover them.

Defendants primarily emphasize *Block v. Hirsh*, 256 U.S. 138 (1921), which addressed a World-War-I-era Washington, D.C., law that allowed tenants to remain in possession of their units after the expiration of their leases. *See* LA.Br.52; SAJE.Br.31-36. *Block* did not even make a cameo in the decision below, and there are at least two reasons why. First, the rent-control regime in *Block* authorized a tenant to remain in possession *only* "so long as he pays the rent." 256 U.S. at 154. Second, the five-Justice majority upheld the regime—which the dissenters described

as "contrary to every conception of leases that the world has ever entertained," *id.* at 159 (McKenna, J., dissenting)—"*only* as a temporary measure … to tide over a passing trouble." *Id.* at 157 (maj. op.) (emphasis added). Here, of course, the FMR Eviction Restriction *excuses* tenants from "pay[ing] [the] rent." L.A. Mun. Code §151.09(A)(1). Nor is it keyed to some temporary external event. Besides, courts have retreated from the emergencies-are-different approach to constitutional rights that *Block* embodies.[2] *See, e.g.*, *Alford v. Walton Cnty.*, 159 F.4th 844, 848 (11th Cir. 2025) ("[G]overnment must respect constitutional rights during public emergencies, lest the tools of our security become the means of our undoing."). Hence, while *Block* is perhaps "still good law" in a formal sense, it is not informative when it comes to the specific eviction restriction at issue here, and it is "not [an] example[] of the application of modern doctrine to discrete circumstances" more generally. *Berger v. City of Seattle*, 569 F.3d 1029, 1042-43 (9th Cir. 2009) (en banc).

SAJE (but not the City) also purports to have divined a broad and "ancient" principle that landlords could not evict tenants for nonpayment of rent. SAJE.Br.35. That supposedly ancient principle emanates entirely from excerpts in three treatises, *see* SAJE.Br.35 nn.10-11, all of which summarize the same 1731 statute, *see* 4 Geo. II c.28, https://perma.cc/9Y96-PP88; *but see Prout v. Roby*, 82 U.S. (15 Wall.) 471,

[2] The City never suggests that emergency circumstances justify the FMR Eviction Restriction. Even Justice Holmes, *Block*'s author, rejected rent control absent an "exigency." *Chastleton Corp. v. Sinclair*, 264 U.S. 543, 548-49 (1924).

476-77 (1872) (distinguishing the statute from common-law eviction rules). But the balance of the historical record tells a different story: At common law, non-payment of rent, no matter how small, voided the lease, *see Knight's Case*, 77 Eng.Rep. 137, 140-41 (C.P. 1588), and "[l]andlords had the option, upon a tenant's failure to pay rent on time," of "simply using self-help eviction to expel tenants from the leased premises," Douglas I. Brandon, et al., *Self-Help: Extrajudicial Rights, Privileges and Remedies in Contemporary American Society*, 37 Vand. L. Rev. 845, 937 (1984). *See Fresh Pond Shopping Ctr. v. Callahan*, 464 U.S. 875, 876 (1983) (Rehnquist, J., dissenting) (analyzing "landlord's traditional right to evict"); *Del Toro v. Juncos Cent. Co.*, 276 F. 894, 895 (1st Cir. 1921).

That longstanding background principle shines through in *Alabama Association of Realtors v. HHS*, which emphasized that "preventing [landlords] from evicting tenants who breach their leases intrudes on … the right to exclude." 594 U.S. 758, 765 (2021). Defendants downplay that statement on the ground that the Court merely "acknowledg[ed] the importance of the right to exclude" but did not squarely address a takings challenge and "made no effort to answer" whether the government could "limit[]" the right to exclude by precluding eviction of nonpaying tenants. SAJE.Br.37; *see* LA.Br.51. That makes no sense. The Supreme Court emphasized the intrusion on the right to exclude when considering whether the "equities" favored a stay in a case involving the CDC's eviction restriction and in

turn determined that those equities favored the landlords. *Ala. Ass'n of Realtors*, 594 U.S. at 765. If background property-law principles actually supported an eviction restriction in circumstances involving nonpayment of rent, the equities would have cut against the landlords.

In all events, the Federal Circuit in *Darby Development* squarely addressed the constitutionality of the same eviction restriction at issue in *Alabama Association of Realtors* and squarely held that that it effected a *per se* taking by "removing" the "ability" of landlords "to evict non-rent-paying tenants"—all after finding *Yee* "distinguishable" and identifying no background property-rights restrictions that could justify it. 112 F.4th at 1034. Defendants offer no "compelling reason" why this Court should split from the Federal Circuit. *Kelton Arms Condo. Owners Ass'n v. Homestead Ins. Co.*, 346 F.3d 1190, 1192 (9th Cir. 2003). The City describes *Darby Development* as inapposite because it involved an "outright prohibition on evictions for nonpayment of rent." LA.Br.50. The same is true of the FMR Eviction Restriction: It outright prohibits evictions for nonpayment of rent unless the "fair market rent" threshold is breached (which Plaintiffs' defaulting tenants have studiously avoided). SAJE also protests that *Darby Development* "failed even to consider" *PruneYard*. SAJE.Br.39. But that just underscores that *PruneYard* is irrelevant outside the context of properties generally open to all. Indeed, even the

federal government never thought to invoke *PruneYard* in its *Darby Development* briefing.[3]

Nor do Defendants offer any compelling reason why this Court should split from the Eighth Circuit's decision in *Heights Apartments,* which likewise found that an eviction restriction effected a *per se* taking under the logic of *Cedar Point*. The City does not even address that holding, while SAJE dismisses it as "unpersuasive" "for the same reasons *Darby* is not persuasive" and because it supposedly included "an inaccurate statement of the facts in *Yee*." SAJE.Br.40. But SAJE's attack is irreconcilable with the opinion itself, as it does not dispute that *Heights Apartments* accurately recounted that the legal regime at issue in *Yee* did not "deprive[] landlords of their right to evict" for nonpayment. 30 F.4th at 733. That is all that matters here. Simply put, Defendants' submissions only further confirm that the FMR Eviction Restriction effects a *per se* taking.

B. The FMR Eviction Restriction Effects a Regulatory Taking.

The FMR Eviction Restriction's economic impact (*i.e.*, substantial economic losses that render leasing nonviable), its interference with investment-backed expectations (*i.e.*, elimination of the longstanding right to evict for nonpayment), and the character of government action here (*i.e.*, physical occupation of Plaintiffs'

[3] The United States has since declined to seek Supreme Court review in *Darby Development*. *See United States v. Darby Dev. Co.*, No. 25A228 (U.S.).

property by unwanted and nonpaying tenants) also confirm that it effects a regulatory taking under the three-prong *Penn Central* balancing test. *See* Op.Br.35-40. Defendants fail to demonstrate otherwise.

Starting with the economic impact, Defendants (like the district court) insist that Plaintiffs should have alleged a specific diminution in the value of their properties. *See* LA.Br.55-57; SAJE.Br.43-44. But Defendants identify no binding precedent in which a court has rejected a regulatory-takings argument on that basis alone. And courts have consistently recognized that well-pleaded allegations about lost income suffice, especially when (as here) those losses make operating a rental property virtually impossible. *See* Op.Br.38-39; *Bodin v. New Orleans*, 804 F.Supp.3d 669, 685-86 (E.D. La. 2025) (expressing "little doubt" that plaintiffs "satisf[ied] the first [*Penn Central*] prong[]" based on allegations of lost rental income). Although Defendants seek to trivialize the economic impact of the FMR Eviction Restriction (with SAJE doing so via back-of-the-envelope calculations that disregard the costs of operating a rental unit) and thus resist Plaintiffs' allegations that renting is now "financially nonviable," *see* LA.Br.57-58; SAJE.Br.43-44, such factual disputes reflect pre-conceived notions of landlords, ignore Plaintiffs' actual circumstances, and are not properly resolved against the non-prevailing party at the motion-to-dismiss stage in all events.

Defendants also miss the mark on the investment-backed-expectations prong. Their arguments boil down to the proposition that, because rent control generally has existed in the City since 1979, Plaintiffs "bought into rent control" and can never object to any regulation of their property rights, no matter how extreme. *See* LA.Br.60-61; SAJE.Br.47-48. That contention is extraordinary and thankfully not the law. Indeed, the Supreme Court has already held that governments "do not have the unfettered authority to 'shape and define property rights and reasonable investment-backed expectations,' leaving landowners without recourse against unreasonable regulations." *Murr v. Wisconsin*, 582 U.S. 383, 396 (2017). Furthermore, Defendants forget that while rent control has been around for a while, the City only recently blocked the exits. Up until only a few years ago (and consistent with the common law), the City had *always* recognized a landlord's right to evict for nonpayment. *See* Op.Br.36-37; *contra* SAJE.Br.48. That historically grounded and "explicit governmental guarantee" of the right to exclude non-paying tenants "form[s] the basis of a reasonable investment-backed expectation." *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1011 (1984).

Defendants also dispute the last *Penn Central* prong (*i.e.*, the character of the government action), but only by recycling their theory that the FMR Eviction Restriction is not properly characterized as effecting a physical invasion. *See* LA.Br.62-63; SAJE.Br.49. That theory remains unconvincing. Indeed, to accept the

proposition that the government is merely "adjusting the benefits and burdens of economic life" when it empowers defaulting tenants to maintain a physical presence on Plaintiffs' property, LA.Br.62, is to impermissibly relegate "the right to exclude [to] an empty formality, subject to modification at the government's pleasure," *Cedar Point*, 594 U.S. at 158.

All that leaves SAJE arguing that Plaintiffs' "regulatory takings claim" against the FMR Eviction Restriction is "not ripe" because the City purportedly has not engaged in "final action"—ostensibly because it could have authorized an increase in allowable rent above the 4% Rent-Increase Cap.[4] SAJE.Br.21-22. But the City does not doubt that it has engaged in final action, and that position is correct. "The finality requirement is relatively modest," and "[a]ll a plaintiff must show is that 'there [is] no question ... about how the regulation[] at issue appl[ies] to the particular land in question.'" *Pakdel v. City & Cnty. of S.F.*, 594 U.S. 474, 478 (2021). The regulation "at issue" in Plaintiffs' challenge to the FMR Eviction Restriction is the FMR Eviction Restriction—not the 4% Rent-Increase Cap—and there is no dispute

[4] Defendants separate every takings claim into a subsidiary *per se* takings "claim" and regulatory-takings "claim." The one part of *Yee* relevant here, however, explains that "arguments that [an] ordinance constitutes a taking in two different ways, by physical occupation and by regulation, are not separate *claims*," but rather "separate *arguments* in support of a single claim—that the ordinance effects an unconstitutional taking." 503 U.S. at 535.

that it precludes evictions unless the City's economic thresholds are breached. Ripeness is no obstacle.

II. The 4% Rent-Increase Cap Is Doubly Unconstitutional.

The 4% Rent-Increase Cap violates both the Takings Clause and Equal Protection Clause. *See* Op.Br.40-50. Defendants' contrary arguments are groundless.

A. The 4% Rent-Increase Cap Violated the Takings Clause.

1. The 4% Rent-Increase Cap effected a *per se* taking.

The 4% Rent-Increase Cap forced Plaintiffs to continue renting to incumbent tenants at exceptionally low rates—even though their fixed-term leases had expired—and precluded them from re-renting to new tenants willing and able to pay market rates. Under *Cedar Point*, that is a *per se* taking of the right to exclude.

Defendants' arguments are as unpersuasive as they are cursory (comprising a grand total of five paragraphs). *See* LA.Br.63-65; SAJE.Br.23-24. As with the FMR Eviction Restriction, Defendants principally claim that *Yee* forecloses Plaintiffs' argument.[5] But Defendants overlook that the petitioners in *Yee* "d[id] not challenge rent controls as such," Pet.Br.10, *Yee*, No. 90-1947 (U.S. Nov. 27, 1991), 1991 WL 936997, and that the Supreme Court consequently did "not" address "ordinary rent

[5] SAJE also references dicta from *Tahoe-Sierra Preservation Council v. Tahoe Regional Planning Agency*, 535 U.S. 302, 322-23 (2002). *See* SAJE.Br.24. That dicta cites only *Block* and omits that *Block*'s holding is limited to wartime exigencies. *See* 256 U.S. at 157.

control statutes," 503 U.S. at 526. Instead, "[t]he gravamen of the park owners' challenge in *Yee* concerned an alleged transfer of value that was occasioned by the rent-control ordinance—a theory that was 'predicated on the unusual economic relationship' between park owners and mobile-home owners." *Darby Dev.*, 112 F.4th at 1035. Plaintiffs here have brought no such challenge.

This Court thus must look beyond *Yee* to *Cedar Point*. And "after *Cedar Point*," "[i]t is pure sophistry to claim that the state does not engage in a taking when it authorizes a tenant to stay continuously in possession of the leased premises after the expiration of the lease at a rent that is consciously set below market value." Richard Epstein, *A Bombshell Decision on Property Takings*, Hoover Inst. (June 28, 2021), https://perma.cc/34MQ-MAST. The City's submission reinforces the point, *see* LA.Br.64-65, as it seeks to evade *Cedar Point*'s clear teachings by implausibly equating Plaintiffs' private residences to a shopping mall that is "open to the public for the purpose of encouraging the patronizing of its commercial establishments," *PruneYard,* 447 U.S. at 77.

The City also invokes *Florida Power*, but that decision is no more relevant in this context. *See* LA.Br.65. Although the City recognizes that, in *Florida Power*, "the government did not 'require[] utilities, over objection, to … refrain from terminating' their contract with the company that used their property," it dismisses that caveat as immaterial here because the 4% Rent-Increase Cap purportedly "d[id]

not require a landlord to refrain from terminating a lease." LA.Br.65 (quoting 480 U.S. at 251 n.6). That blinks reality. If Plaintiffs had told their tenants that Plaintiffs would terminate their leases and evict them unless they paid market rates, Plaintiffs would have faced monetary and criminal penalties. *See* L.A. Mun. Code §151.10(A)-(B); Op.Br.16-17. Try as they might, Defendants cannot escape the reality that the 4% Rent-Increase Cap "appropriate[d] for the enjoyment of third parties the [Plaintiffs'] right to exclude." *Cedar Point*, 594 U.S. at 149.

2. The 4% Rent-Increase Cap effected a regulatory taking.

The *Penn Central* factors likewise confirm that the 4% Rent-Increase Cap accomplished a regulatory taking. Confronted with that argument, Defendants first suggest that Plaintiffs did not suffer a severe economic burden under the cap because they failed to seek a rent adjustment. *See* LA.Br.65-66; SAJE.Br.42-43.[6] That effort to smuggle in a meritless threshold objection, *see infra* p.20, suffers from a fatal defect. The City's Rent Stabilization Ordinance (RSO) explains that, "[i]f the only justification offered for the requested rent increase … is an assertion that the maximum rents … do not allow the landlord a return sufficient to pay both the operating expenses and debt service on the rental unit …, a rent adjustment *will not be permitted* … to a landlord who acquired an interest in the rental unit ... after

[6] SAJE again claims that diminution-in-value allegations are necessary to clear the first *Penn Central* prong. *But see supra* p.12.

October 1, 1978." L.A. Mun. Code §151.07(B)(2) (emphasis added); ER-61.¶66. In other words, the City has already declared that difficulty covering operating costs—the problem for Plaintiffs—is *not* a proper justification for a rent adjustment for landlords in Plaintiffs' shoes.

Defendants next argue that the 4% Rent-Increase Cap did not interfere with reasonable investment-backed expectations because the City has long capped rents. *See* LA.Br.66-67; SAJE.Br.46-47. As Defendants do not dispute, however, the City jettisoned its decades-old, more permissive rent-cap formula when enacting the particularly onerous 4% Rent-Increase Cap via a special code provision. *See* Op.Br.43-44; L.A. Mun. Code §151.34. That substantial deviation from the *status quo* is the definition of interfering with valid expectations. *See Murr*, 582 U.S. at 396.

The character-of-government-action prong is even more straightforward. *See* Op.Br.44. Indeed, the City never addresses that prong, and SAJE again just cross-references its *per se* takings arguments, *see* SAJE.Br.49, which remain unimpressive. All three *Penn Central* prongs are satisfied at this early stage.

3. Plaintiffs' takings challenges to the 4% Rent-Increase Cap are both timely and ripe.

Lacking credible merits arguments, Defendants advance timeliness and ripeness objections. *See* LA.Br.29-40; SAJE.Br.7-18. Those arguments go nowhere.

Although the City never argued below that Plaintiffs' takings challenge to the 4% Rent-Increase Cap was untimely, it belatedly asserts that the district court "properly held" that Plaintiffs' "physical takings … claim[]" is "time-barred." LA.Br.35. SAJE agrees. *See* SAJE.Br.9-10. But neither Defendant actually defends the district court's untimeliness theory. The court below found the *per se* taking argument untimely on the theory that "the four percent increase is consistent with what would have been charged under the RSO" since 1979. ER-16. As Defendants acknowledge, *see* LA.Br.38; SAJE.Br.10-14, that reasoning is untenable. The 4% Rent-Increase Cap did *not* allow Plaintiffs to charge what otherwise "would have been charged under the RSO" but instead established a ceiling nearly 50% below that amount.

Nonetheless, Defendants assert that Plaintiffs should have asserted their *per se* taking argument against the 4% Rent-Increase Cap—enacted in 2023—by 1981 (after the passage of the RSO in 1979) or 2011 (after Plaintiffs acquired their properties). *See* LA.Br.37; SAJE.Br.9. "Either formulation sounds absurd, because it is." *Sekhar v. United States*, 570 U.S. 729, 738 (2013). A claim accrues when a plaintiff "knows or has reason to know of the injury which is the basis of the action." *Lukovsky v. City & Cnty. of S.F.,* 535 F.3d 1044, 1051 (9th Cir. 2008). Here, Plaintiffs' asserted injury arises from the City's decision to severely restrict their right to exclude in the immediate aftermath of the pandemic, when Plaintiffs (like

other landlords) experienced hyperinflationary conditions and struggled to meet operating costs. *See, e.g.*, ER-31.¶1. Plaintiffs had no reason to know of *that* injury until the City substantively amended the RSO and enacted the 4% Rent-Increase Cap. *See* L.A. Mun. Code §151.34. Because Plaintiffs sued in 2024—the same year the cap took effect—the two-year statute of limitations does not bar their *per se* takings argument.

Defendants' alternate suggestion that Plaintiffs' regulatory-takings argument against the 4% Rent-Increase Cap is unripe is unsound. As explained, Defendants' position is that, just to challenge the cap, Plaintiffs had to request a rent adjustment they could never actually obtain, *see* L.A. Mun. Code §151.07(B)(2); ER-17, ER-61.¶66. LA.Br.29-35; SAJE.Br.14-16. Not so: A party need not jump through administrative hoops when "the government is committed to a position." *Pakdel,* 594 U.S. at 479. Here, the City had already announced that it would not allow market rates, *see* ER-17, ER-61.¶66, and it enacted a provision that expressly forbids rent adjustments for landlords like Plaintiffs who struggle to cover "operating expenses [or the] debt service on the rental unit," L.A. Mun. Code §151.07(B)(2). Against that backdrop, "submission" to the rent-adjustment board "would not have clarified" anything. *Pakdel*, 594 U.S. at 480; *contra* SAJE.Br.15-16; LA.Br.32-35. Plaintiffs' challenge to the 4% Rent-Increase Cap thus is not only plausible, but right on time.

B. The 4% Rent-Increase Cap Violated the Equal Protection Clause.

The City's decision to apply the 4% Rent-Increase Cap exclusively on only older, RSO-regulated properties violated the Equal Protection Clause too. The cap trampled on Plaintiffs' constitutionally protected property rights, *see supra* Section II.A.1, and discriminated in favor of property owners who own buildings built after October 1, 1978—buildings that the City concedes are similarly situated and together with RSO-regulated properties comprise its stock of "multi-family rental units," ER-86-87.¶123 (quoting L.A. Mun. Code §165.01). Disparate treatment on the basis of constitutionally protected fundamental rights triggers strict scrutiny, and Defendants do not argue that the City can satisfy that demanding test. Indeed, this reverse-grandfather clause is particularly pernicious because it allowed the City to burden constitutional property rights in ways that the City effectively concedes would deter new investment if applied equally to all landlords.

SAJE contends that Plaintiffs "ignore" the "'similarly situated' requirement." SAJE.Br.51. But the district court did not dispute that requirement, *see* ER-18-19, and the City does not do so either. Undeterred, SAJE claims that non-RSO-regulated properties are not proper comparators because state law (the Costa-Hawkins Act) barred "the City from imposing [the 4%] cap[]" on such properties. SAJE.Br.50-52. But the two cases that SAJE cites—*Thornton v. City of St. Helens*, 425 F.3d 1158 (9th Cir. 2005), and *Signs for Jesus v. Town of Pembroke*, 977 F.3d 93 (1st Cir.

2020)—do not support its position, as they implicated comparators in entirely different businesses or comparators who fell entirely beyond the localities' regulatory authority. By contrast, non-RSO-regulated properties are both in the rental business and fully subject to the City's regulatory authority. Indeed, nothing precludes the City from *eliminating* its discriminatory treatment of older properties and treating all multi-family properties equally.

Next, Defendants posit that the 4% Rent-Increase Cap did not implicate any fundamental rights under substantive-due-process precedent. *See* LA.Br.67-69; SAJE.Br.53-54. That is immaterial. "Whenever a state law infringes a constitutionally protected right," "intensified equal protection scrutiny" applies. *Att'y Gen. v. Soto-Lopez*, 476 U.S. 898, 904 (1986) (plurality op.); *accord Plyler v. Doe*, 457 U.S. 202, 217 n.15 (1982). Unlike the right to assisted suicide, *see* SAJE.Br.53 (citing *Vacco v. Quill*, 521 U.S. 793 (1997)), the right to exclude is indisputably constitutionally protected (by the Takings Clause), *see Cedar Point*, 594 U.S. at 150. Whether that right also triggers substantive-due-process protections is an interesting question, but ultimately academic.

Defendants thus cannot evade strict scrutiny, which they flunk. Regardless, they offer no persuasive reason why the 4% Rent-Increase Cap survives even rational-basis review. They simply parrot the district court's reasoning, claiming that the 4% Rent-Increase Cap facilitates new construction by making regulation less

burdensome for newer properties and that the Costa-Hawkins Act limits the City's ability to cap rents on non-RSO properties. *See* LA.Br.68-69; SAJE.Br.54. But the former is an admission that the rational and constitutional route here was to *eliminate* the cap for everyone. And, to reiterate, Defendants do not argue that the Costa-Hawkins Act precluded them from doing just that.

Defendants' citations to *Marcus Brown Holding Co. v. Feldman,* 256 U.S. 170 (1921), *see* SAJE.Br.52, 54, and *Pennell v. City of San Jose*, 485 U.S. 1 (1988), *see* LA.Br.69, cannot rescue the 4% Rent-Increase Cap either. *Marcus Brown* rejected an equal-protection claim on narrow emergency grounds not applicable here (just like *Block*). 256 U.S. at 198-99. And *Pennell* upheld only the landlord-specific rent-adjustment scheme directly before it, which did not involve a reverse-grandfather clause like the one that dooms the 4% Rent-Increase Cap. 485 U.S. at 13-14.

In the end, Defendants are left pressing the same timeliness objection that they pressed against the *per se* takings argument.[7] *See* SAJE.Br.17-18; LA.Br.35-37. That argument is equally unsuccessful in this equal-protection context. *See supra* pp.19-20. The 4% Rent-Increase Cap is doubly unconstitutional.

[7] The City claims that Plaintiffs did not address the timeliness of their equal-protection claim. *See* LA.Br.35. Wrong again. *See* Op.Br.48.

III. The Relocation-Fee Requirement Violates The Takings Clause.

A. The Relocation-Fee Requirement Effects a *Per Se* Taking.

The Relocation-Fee Requirement conditions landlords' ability to repossess their properties on paying substantial fees to their tenants (and potentially suffering an additional City-mandated year-long tenancy if they have any "protected" tenants). Here, that requirement likewise violates the Takings Clause by appropriating Plaintiff Harris' right to exclude. *See* Op.Br.50-55.

Defendants' only response is to double-down on the district court's assertion that *Ballinger v. City of Oakland*, 24 F.4th 1287 (9th Cir. 2022), forecloses the argument. *See* LA.Br.70-71; SAJE.Br.26-27. That remains incorrect. As Defendants concede, *Ballinger* did not involve (or even mention) the right to exclude, as the plaintiffs there instead asserted that Oakland's relocation-fee requirement "constituted a physical taking of their money." SAJE.Br.26; *see* LA.Br.70. As this Court has explained, "cases are not precedential for propositions not considered." *United States v. Pepe*, 895 F.3d 679, 688 (9th Cir. 2018). SAJE tries to evade that rule on the theory that the *Ballinger* Court issued its decision "in express contemplation of *Cedar Point* (after supplemental briefing)." SAJE.Br.28. But the supplemental briefing in *Ballinger* included reminders that "[t]he right to exclude is not at issue" because the plaintiffs there "[ha]d not raise[d] that issue below or on appeal." Supp.Resp.Br.1-2 & n.1, *Ballinger*, No. 19-16550 (9th Cir.

Aug. 16, 2021), 2021 WL 3776677. Accordingly, this Court need not "vitiate" *Ballinger*, LA.Br.70, or "reconsider" it, SAJE.Br.28, to recognize that it is immaterial here and that Plaintiff Harris can move forward with her *per se* takings argument against the Relocation-Fee Requirement.

B. The Relocation-Fee Requirement Effects a Regulatory Taking.

The regulatory taking effected by the Relocation-Fee Requirement is likewise clear. After both Defendants repeat their ill-advised arguments about diminution of property value, *see* LA.Br.71; SAJE.Br.44, SAJE intimates that Plaintiff Harris cannot plausibly suffer any economic harm from the Relocation-Fee Requirement because she would at least receive some rent from her existing tenants but would not receive any from family members. *See* SAJE.Br.44. That glib assertion disregards the economic burdens actually alleged—Plaintiff Harris cannot afford the draconian fees necessary to exercise her fundamental property rights. *See* ER-65-66.¶75, ER-94.¶138. And it confirms that the character-of-government-action prong weighs in favor of a regulatory taking too, as the Relocation-Fee Requirement prevents Plaintiff Harris from terminating a tenancy and instead "compels" her to suffer the physical presence of unwanted tenants at the government's behest. *Yee*, 503 U.S. at 527; *see Seawall Assocs. v. City of New York*, 542 N.E.2d 1059, 1064-65 (N.Y. 1989).

Defendants' only other argument is that Plaintiff Harris could not have had reasonable investment-backed expectations because the City has required relocation

fees for a few decades. *See* LA.Br.71; SAJE.Br.48-49. But a long line of cases has made clear that government "may not impose a charge for the enjoyment of a right" that receives constitutional protection. *Murdock v. Pennsylvania*, 319 U.S. 105, 113 (1943). And that principle applies with full force in the takings context: "'[B]asic and familiar uses of property' are not a special benefit that 'the Government may hold hostage.'" *Cedar Point*, 594 U.S. at 162. The Court cannot fault Plaintiff Harris for believing that the City could not legitimately ransom her right to exclude through substantial and ever-increasing sums of money.

C. Plaintiffs' Relocation-Fee Requirement Challenge Is Timely.

Defendants thus return to the timeliness well, asserting that Plaintiffs' entire takings claim against the Relocation-Fee Requirement is barred by the two-year statute of limitations because the City originally enacted it in 2017. *See* LA.Br.40-42; SAJE.Br.18-20. The problem for Defendants is that they are narrowly construing the takings claim as a facial claim, not an as-applied one. But the takings claim here involves "the particular impact of a government action on a specific piece of property," *Levald, Inc. v. City of Palm Desert*, 998 F.2d 680, 686 (9th Cir. 1993)—namely, the specific property of Plaintiff Harris, who did not have an intent to repossess her property back in 2017, but now has a *current* desire to exclude incumbent tenants and repossess her property due to the City's increasingly severe restrictions, including the recently enacted FMR Eviction Restriction and 4% Rent-

Increase Cap, *see* Op.Br.54-55. The plaintiffs in *Cedar Point* raised a similar "as applied" takings challenge to a regulation enacted in 1975. *See, e.g.*, Resp.Br.10, No. 20-107 (U.S. Feb. 5, 2021), 2021 WL 492891 ("They alleged that, as applied to them, the access regulation constituted a *per se* taking."). There is no reason why Plaintiff Harris cannot do the same thing vis-à-vis an ordinance that has been on the books for 42 years less and imposes a particular hardship on a discrete action—repossessing property for family use—that became relevant only recently. Litigants have no use-it-or-lose-it obligation to bring an as-applied challenge to statutes that limit their ability to engage in future actions that they have no present intent to undertake, and courts would be ill-served to require such premature (and perhaps ultimately unnecessary) challenges.

IV. The Renter Protections Notice Requirement Violates The First Amendment.

Finally, Defendants fail to meaningfully defend the City's First Amendment violation. Through its Renter Protections Notice Requirement, the City has forced Plaintiffs to broadcast a notice regarding RSO provisions that are intended to neuter their core property rights. That effort to compel speech triggers strict scrutiny, and Defendants again never argue that the City can satisfy that test. *See* Op.Br.56-58.

Although it conceded below that the Renter Protections Notice Requirement had "compelled speech," D.Ct.Dkt.19.at.23-24, the City (joined by SAJE) now suggests that it has "not regulate[d] speech" at all—all based on the Supreme Court's

decision in *Rumsfeld v. FAIR*, 547 U.S. 47 (2006), which the City did not bother to cite below. LA.Br.72-76; *see* SAJE.Br.55-58. The City had it right the first time. Unlike the regulation of conduct in *FAIR* (*i.e.*, holding a job fair), *see* 547 U.S. at 60, the Renter Protections Notice Requirement restricts Plaintiffs' ability to decorate their own property and compels them to disseminate the City's preferred message instead. Regardless whether compliance with that requirement prevents Plaintiffs from displaying a painting in the foyer or keeping the premises minimalist, the obligation to communicate this City-drafted message in their homes plainly implicates protected expression. *See Green v. Miss USA, LLC*, 52 F.4th 773, 783 n.10 (9th Cir. 2022); *Spence v. Washington*, 418 U.S. 405, 405-06 (1974) (display on the wall of an apartment deemed protected expression).

Defendants nevertheless insist that Plaintiffs' obligation to post the Renter Protections Notice (as opposed to verbally sharing it) is non-expressive on the theory that its contents are factual and authored by the City. *See* LA.Br.70-76; SAJE.Br.55-58. Those arguments do not move the needle. Non-ideological messages, particularly "government-drafted" ones, are still speech. *NIFLA v. Becerra*, 585 U.S. 755, 766 (2018). That is why the Supreme Court has long held that compelled "statements of fact the speaker would rather avoid" implicate the First Amendment, just like compelled "expressions of value, opinion, or endorsement." *Hurley v. Irish-Am. Gay, Lesbian & Bisexual Grp.*, 515 U.S. 557, 573 (1995).

Defendants alternatively suggest that only lesser-protected commercial speech is at issue.[8] *See* LA.Br.77-78; SAJE.Br.58-59. That argument does not get the job done either. This Court has expressly rejected the idea that general participation in commercial activity (here, the rental market) necessarily means that *any* speech relating to that activity is commercial. Rather, the label is reserved for "speech [that] communicates the terms of an actual or potential transaction." *X Corp. v. Bonta*, 116 F.4th 888, 901 (9th Cir. 2024). By compelling Plaintiffs to give notice about *the City's* own laws (rather than terms that *Plaintiffs* inserted into a lease), the Renter Protections Notice Requirement plainly does not require disclosures regarding *any* transaction involving Plaintiffs. It is instead "a pure 'transparency' measure," which is "subject to strict scrutiny." *Id.* at 902.

Even accepting the erroneous premise that commercial speech is at issue, the Renter Protections Notice Requirement cannot survive under either *Zauderer v. Office of Disciplinary Counsel,* 471 U.S. 626 (1985), or intermediate scrutiny. Under *Zauderer*, the government can compel speech only if it is "factual and uncontroversial" and not "unjustified or unduly burdensome." *NAWG v. Bonta*, 85 F.4th 1263, 1275 (9th Cir. 2023). The Renter Protections Notice cannot survive even

[8] The City posits that Plaintiffs "waived" their response to the commercial-speech argument even though "[t]he District Court expressly did not reach th[at] argument." LA.Br.77 & n.3. But appellants need not address "all *possible* alternate grounds for affirmance—even those not ruled upon by the district court—in an opening brief." *Warmenhoven v. NetApp, Inc.*, 13 F.4th 717, 729 (9th Cir. 2021).

the first prong, as it is "fundamentally at odds" with core property rights, *id.* at 1277, and its contents have "all along been the subject of sharp disagreements," *CHIP v. City of New York*, 59 F.4th 540, 546 (2d Cir. 2023); *see* ER45-47.¶¶30-37. Indeed, the City itself concedes that rent-control regimes have generated "over a hundred years" of disagreement. LA.Br.10. That is the definition of controversial. *Zauderer* is accordingly inapposite.

The Renter Protections Notice Requirement also cannot survive intermediate scrutiny, which requires a "substantial government interest" advanced by means that are "not … more extensive than necessary." *PhRMA v. Stolfi*, 153 F.4th 795, 826 (9th Cir. 2025). The City's asserted interest here—"informing tenants" about the RSO, LA.Br.80, or "transparency for its own sake"—is "insufficient as a substantial state interest." *Stolfi*, 153 F.4th at 826. And its decision to burden Plaintiffs with a compelled-speech mandate is clearly "more extensive than necessary," *id.*, as the City could simply speak to tenants directly, *NIFLA*, 585 U.S. at 775.

Thus, while strict scrutiny is the operative test, the Renter Protections Notice Requirement fails every conceivable test.

CONCLUSION

The Court should reverse.

Respectfully submitted,

s/Paul D. Clement

PAUL D. CLEMENT
Counsel of Record
ANDREW C. LAWRENCE
MITCHELL K. PALLAKI
CLEMENT & MURPHY, PLLC
706 Duke Street
Alexandria, VA 22314
(202) 742-8900
paul.clement@clementmurphy.com

Counsel for Plaintiffs-Appellants

RICK RICHMOND
LARSON LLP
444 S. Flower Street
30th Floor
Los Angeles, CA 90071

February 10, 2026

CERTIFICATE OF COMPLIANCE

1. This brief complies with the type-volume limitation of Circuit R. 32-1 because this brief contains 6,999 words, excluding the parts of the brief exempted by Fed. R. App. P. 32(f).

2. This brief complies with the typeface requirements of Fed. R. App. P. 32(a)(5) and the type style requirements of Fed. R. App. P. 32(a)(6), because it has been prepared in a proportionally spaced typeface using Microsoft Word 2016 in 14-point Times New Roman type.

February 10, 2026

s/Paul D. Clement
Paul D. Clement

CERTIFICATE OF SERVICE

I hereby certify that on February 10, 2026, I electronically filed the foregoing with the Clerk of the Court for the United States Court of Appeals for the Ninth Circuit by using the ACMS system. I certify that all participants in this case are registered CM/ECF users and that service will be accomplished by the ACMS system.

s/Paul D. Clement
Paul D. Clement