25-5029

United States Court of Appeals
for the Ninth Circuit

MELVIA HARRIS; ROBERTA KNIGHTEN,

Plaintiffs-Appellants,

against

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

AMICUS BRIEF FOR THE CITY OF NEW YORK IN SUPPORT OF DEFENDANT-APPELLEE

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INTEREST OF AMICUS CURIAE AND SUMMARY OF ARGUMENT[1]

The City of New York submits this brief as amicus curiae in support of Defendant-Appellee City of Los Angeles. New York City has over a century of experience with rent regulations, which date back to World War I. *Cmty. Hous. Improvement Prog. v. City of N.Y.*, 59 F.4th 540, 544 (2d Cir 2023). Modern rent regulations in New York, codified as the Rent Stabilization Law, were enacted in 1969 and have since been amended multiple times. *Id.*; *see* 1974 N.Y. Laws, ch. 576 (codified at N.Y. Unconsol. Laws ch. 249-B, §§ 1-14 (Consol. 2021)); N.Y.C. Admin. Code § 26-501 *et seq*. In New York, as in Los Angeles, there are provisions governing annual rent increases, generally requiring lease renewals, and limiting evictions in regulated units. The City has a strong interest in maintaining the body of precedent recognizing that these forms of rent regulations are constitutional.

Attempting to upend decades of settled constitutional law, the plaintiffs in this case incorrectly contend that the Los Angeles rent

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[1] All parties have consented to the filing of this brief. No party's counsel authored this brief in whole or in part, and no person or entity other than amici or their counsel made a monetary contribution intended to fund the preparation or submission of this brief. See Fed. R. App. P. 29(a)(4)(E).

regulations they challenge effect a per se physical taking. They mistakenly presuppose that their bundle of property rights includes a boundless right to exclude tenants who are in arrears or whose leases have expired and to set rental rates without any government interference. Their theory flies in the face of settled jurisprudence, as the City of Los Angeles's brief has shown (Appellee's Brief ("LA Br.") at 43–52, 63–65, 69–-70).

The City of New York writes separately to emphasize that, not only is plaintiffs' theory foreclosed by controlling precedent, it also rests on a deep misconception about historical understandings of property rights in the landlord–tenant context. Beginning in English common law and continuing in our nation's legal traditions since before the Founding, an out-of-possession landlord's right to exclude tenants has been constrained by a variety of often expensive and cumbersome eviction restrictions, even where tenants owed back-rent or after their leases had expired. This historical tradition confirms, as the Supreme Court has consistently held, that laws that increase landlords' costs, reduce their income, or delay their ability to evict tenants are not physical takings because landlords do not have an unfettered right to exclude. The challenged Los Angeles rent regulations, which may limit but do not

preclude the removal of a tenant, are of a piece with that longstanding tradition.

This brief also explains that plaintiffs' physical-taking claims should be rejected for the additional reason that they seek to invalidate the challenged rent regulations on their face. On a facial challenge, out of respect for local legislative authority in matters of deep local concern, the Court should not invalidate landlord–tenant regulations that may be lawful in other applications. To the extent the named plaintiffs contend that the provisions prevent them from terminating a tenancy because of their particular circumstances, the claim should be reviewed on an as-applied basis. Their claims do not support the sweeping facial relief that they seek.

ARGUMENT

A. Restrictions on evictions and rents are not a physical taking because landlords do not have an unrestricted right to exclude tenants in Anglo-American historical tradition.

The main thrust of plaintiffs' physical-takings claims is that the challenged rent regulations "take" their property rights by restricting their ability to choose tenants or set rents to maximize their rental income (*e.g.*, Brief for Appellants ("App. Br.") 40–42). But their theory does not square with history. Property rights, in this context, are defined

with reference to the longstanding Anglo-American common-law tradition. And that tradition has for centuries restricted the possessory rights of landlords vis-à-vis their tenants. Contrary to plaintiffs' underlying assumption, landlords have not had an unfettered right to remove tenants for centuries, but have instead been required to invoke a variety of potentially time-consuming and expensive legal mechanisms to lawfully remove tenants. As the Supreme Court recognized when upholding World War I–era rent-control regulations in the District of Columbia, "preference given to the tenant in possession … is traditional in English law." *Block v. Hirsh*, 256 U.S. 135, 157 (1921).

Fully in step with this history, recent Supreme Court precedent confirms that while state and local governments cannot compel residential property owners to rent out their property or permanently prevent landlords from terminating a tenancy without providing just compensation, it is not a per se taking to make it more time consuming or potentially more expensive to remove a tenant. Consistent with the history of regulation of landlords' property rights, the Supreme Court has held that regulations of the landlord–tenant relationship do not work a physical taking unless a landlord is prohibited from exercising the right to exclude—and plaintiffs are not so prohibited under the provisions challenged here.

1. The extent of property owners' right to exclude depends on historical background restrictions on property rights.

To determine whether the government has "taken" a property interest, courts "first must determine whether any property interest exists." *S. Cal. Edison Co. v. Orange Cty. Transp. Auth.*, 96 F.4th 1099, 1104 (9th Cir. 2024). "Because the Constitution protects rather than creates property interests, the existence of a property interest is determined by reference to existing rules or understandings that stem from an independent source such as state law." *Id.* (quotation marks omitted). The court's "inquiry is not limited to state law, however, or else a State could sidestep the Takings Clause by disavowing traditional property interests in assets it wishes to appropriate." *Id.* (quotation marks omitted). Thus, courts "look as well to traditional property law principles, plus historical practice and the Supreme Court's precedents." *Id.* (quotation marks omitted).

The original public understanding of the scope of landowners' property rights bears on whether there has been a physical taking because the Constitution protects property rights as they were commonly understood when the Takings Clause was adopted and applied to the States. *See Knick v. Twp. of Scott*, 588 U.S. 180, 199 (2019) (construing Takings Clause in light of original understanding and common-law

practices); *Fulton v. Fulton Cty. Bd. of Commrs.*, 148 F.4th 1224, 1254 (11th Cir. 2025) (explaining that "the original intent of Americans when they ratified [the Fourteenth] Amendment governs [the Takings Clause's] meaning").

"Property" means the "group of rights inhering in the citizen's relation to the physical thing, as the right to possess, use and dispose of it." *United States v. Gen. Motors Corp.*, 323 U.S. 373, 378 (1945). Historically, "property" was understood to encompass more than just "physical possession of land or chattels," and to also include the related rights of "free use, enjoyment, and disposal" of them. *Nekrilov v. City of Jersey*, 45 F.4th 662, 683 (3d Cir. 2022) (Bibas, J., concurring); *see also* William M. Treanor, *The Original Understanding of the Takings Clause and the Political Process*, 95 Colum. L. Rev. 782, 827 (1995).

"[M]any government-authorized physical invasions will not amount to takings because they are consistent with longstanding background restrictions on property rights." *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 160 (2021). Thus, while the right to exclude has historically been a central facet of property ownership, and "one of the most essential sticks in the bundle of rights that are commonly characterized as property," not all landowners have the same near-absolute right to exclude. *Id.* at 149 (citation modified); *see also Heart of Atlanta Motel*

v. United States, 379 U.S. 241, 261 (1964). Thus, a key question for a physical-taking claim is whether a property owner has a historically recognized right, within its larger bundle of property rights, that the government has required the owner to yield.

2. For centuries, lessors' right to exclude has been cabined by restrictions on retaking possession of rented property from tenants.

Rent regulations and eviction restrictions generally do not effect physical takings because they are consistent with the original public understanding of the rights of landlords in the Anglo-American tradition. Since well before the Founding, "longstanding background restrictions on property rights," *Cedar Point*, 594 U.S. at 160, have included limitations on the right of landlords to exclude their tenants, even when those tenants were in arrears or their leases had expired. In America, as in England, a landlord's right to exclude a tenant has long been regulated. Thus, regulations like those enacted by the City of Los Angeles that restrict but do not eliminate a landlord's right to exclude are not per se physical takings because they are consistent with historical restrictions on the right of out-of-possession landlords to exclude.

The regulation of the landlord–tenant relationship goes back centuries. As early as 1166, a time when tenants' rights were in their

nascency, King Henry II established the "assize of novel disseisin"—a summary judicial process intended to resolve disputes between landlords and tenants as to the possession of land. Joseph Biancalana, *For Want of Justice: Legal Reforms of Henry II*, 88 Colum. L. Rev. 433, 481 (1988). The procedure prevented landlords from ejecting tenants without going through legal process by "compel[ing] the summary restoration of the [tenant] and forc[ing] the ousting [landlord] to bring an action at law." Steven J. Eagle, *The 1997 Regulatory Takings Quartet: Retreating from the "Rule of Law"*, 42 N.Y.L. Sch. L. Rev. 345, 368 n.155 (1998). Landlords were required to bring a "writ of entry *ad terminum qui praeterit*" to recover lands from a tenant "who had originally held them for a term of years, which term had expired." *Pernell v. Southall Realty*, 416 U.S. 363, 372 (1974).

English laws reflected the common understanding that landlords could face delays in regaining possession of land they had rented. For instance, at the end of the thirteenth century, the English Parliament created a writ allowing a landlord to recover land from a tenant who had failed to pay rent or ceased to perform services on the land, but only after two years—known as "cessavit per biennium." William M. McGovern, Jr., *Dependent Promises in the History of Leases and Other Contracts*, 52 Tul. L. Rev. 659, 664 (1978); Ballentine's Law Dictionary 232

(3rd Ed. 1969); *Lecatt v. Merchants' Ins. Co.*, 16 Ala. 177, 180 (1849) (explaining that a "common law remedy lay for the owner of the estate against the tenant who had ceased for two years to pay the rent, or perform the service which his tenure required"). Under this system, a tenant was not evicted "until the lord *had judgment* in a writ of *cessavit*." *Phelps v. Chesson*, 12 Ired. [34 N.C.] 194, 199 (1851) (emphasis added).

In England, the process for a landlord to lawfully regain possession of land became increasingly cumbersome and costly, to the point that, by the fourteenth century, landlords routinely resorted to extrajudicial self-help to regain possession of land. Mary B. Spector, *Tenants' Rights, Procedural Wrongs: The Summary Eviction and The Need For Reform*, 46 Wayne L. Rev. 135, 150–51 (2000). In response, King Richard II adopted the Forcible Entry Act of 1381, making it a crime to forcibly enter a tenant's property for purposes of eviction. *Id.*; *see also Smith v. Reeder*, 21 Or. 541, 547 (1892). Later, the Act of 1429 imposed civil penalties, including treble damages and restoration of possession, for forcible entry. Randy G. Gerchick, *Comment, No Easy Way Out: Making the Summary Eviction Process a Fairer and More Efficient Alternative to Landlord Self-Help*, 41 UCLA L. Rev. 759, 774 n.60 (1994). "This early prohibition against self-help extended to persons having a right to possession and thus fostered recourse to orderly court process."

Jordan v. Talbot, 55 Cal. 2d 597, 603, n.2 (1961). It was thus established more than six hundred years ago, as a deeply engrained part of the English legal tradition, that landowners who yield their right of possession to a tenant do not have a free hand in evicting their tenants—they might, instead, have to resort to a potentially expensive and time-consuming court process to regain the land.

The early American experience is similar to the experience in England. "[B]y the time our Constitution was drafted," ejectment was the "most important possessory action" and was "the principal means employed by landlords to evict tenants for overstaying the terms of their leases, nonpayment of rent, or other breach of lease covenants." *Pernell*, 416 U.S. at 373; *see also Witherow v. Keller*, 11 Serg & Rawle [Pa.] 271, 277–78 (1824). An ejectment action at this time was similar to the ancient English writs, in that it "restored the disseizee to the actual possession of the land," *Gill v. Patten*, 10 F. Cas. 376, 378, 1 Cranch C.C. 465 (D.C. Cir. Ct. 1807), and was complex and time-consuming, *see Robinson v. Dupray*, 14 Fla. 261, 262 (1873) (describing the "the slow and expensive process of an action in the ordinary form of a suit in ejectment"); *Patchell & Turner v. Johnston*, 64 Ill. 305, 307 (1872) (same). Thus, since the Founding, the American landlord's right

to exclude tenants has been subject to expensive and time-consuming restrictions.

As in England, to deter landlords from turning to self-help, forcible-entry laws "were frequently included among the earliest territorial and state laws in the United States." *Duckworth v. Duckworth*, 327 Or. App. 219, 229 (2023). To promote "the peace and good order of society," states prohibited landlords from taking the law into their own hands, because "remedy must be sought through those peaceful agencies which a civilized community provides for all its members." *Reeder v. Purdy*, 41 Ill. 279, 285 (1866) (concluding that "entry is forcible, within the meaning of this law, that is made against the will of the occupant").[2] It did not matter if the landlord was "wrongfully kept out of possession" by the tenant. *Id.*[3] "This was done that men might learn to appeal to the

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[2] *See also Mason v. Hawes*, 52 Conn. 12, 16 (1884) ("a quiet, peaceable re-entry" by a landlord against the will of a tenant who is "holding over his term" is unlawful).

[3] *See also McCauley v. Weller*, 12 Cal. 500, 524 (1859) ("Questions of title or right of possession cannot arise; a forcible entry upon the actual possession of plaintiff being proven, he would be entitled to restitution, though the … present right of possession are shown to be in the defendant"); *Krevet v. Meyer*, 24 Mo. 107, 109, 1856 Mo. LEXIS 206, *3-4 (1856) ("[T]o take away all inducement to persons to redress themselves at the expense of the peace of the community," if force was used to eject a tenant, "restitution followed as a matter of course, without any regard to the right of the [landlord.]"); *Larue v. Russell*, 26 Ind. 386 (1866) ("A

(cont'd on next page)

law for injuries done them, and not undertake the redress of their own wrongs." *Krevet*, 4 Mo. at 109.[4]

The regulatory pendulum has repeatedly swung back and forth, balancing the landlord's "rights of income incident to ownership" against the tenant's right to be free of "unmerited harassment and dispossession when his lease or rental agreement gives him the right to peaceful and undisturbed possession of the property." *Lindsey v. Normet*, 405 U.S. 56, 66–69 (1972). In response to complaints from landlords that ejectment actions were too cumbersome, many states enacted summary-eviction statutes to give landlords a streamlined way to regain possession. *Id.*[5]

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party peaceably in possession of lands may maintain trespass for an injury to his possession, though the trespasser have a better title to the lands."); *Emsley v. Bennett*, 37 Iowa 15 (1873).

[4] To be sure, some territories allowed landlords to exercise self-help at the Founding, but its exercise was "fraught with violence and quarrels and bloodshed," leading those states to adopt forcible-entry laws by the time of Reconstruction. *Lindsey v. Normet*, 405 U.S. 56, 71–72 (1972) (citation modified) (explaining that Oregon eliminated self-help in 1866); *see Smith v. Reeder*, 21 Or. 541, 546 (1892).

[5] *See also Robinson*, 14 Fla. at 262 (1873) (describing the "just and salutary remedy to be found in the special and summary proceeding regulated by the act of 1868," adopted by Florida in response to complaints that ejectment actions were too slow and expensive); *De Coursey v. Guar. Trust & Safe Deposit Co.*, 81 Pa. 217, 227 (1876) (applying Pennsylvania's 1772 Act designed "to furnish a summary proceeding, in which the legal rights of the parties should be care[]fully protected and yet avoid the intolerable delays incident to a suit of ejectment").

But summary-eviction proceedings were strictly construed and available only if the landlord could "make out a clear case, free from ambiguity." *Cal. Quicksilver Min. Co. v. Redington*, 50 Cal. 160, 161 (1875). Even with summary proceedings, the right to exclude was not automatic. For instance, in Pennsylvania, under the Act of 1863, the tenant was "entitled to possession for the period of three months after the notice to quit." *Leidy v. Proctor*, 97 Pa. 486, 490 (1881). The upshot of the Anglo-American historical laws is that in America, as in England, a landlord's right to exclude a tenant has long been subject to regulation.

These historical laws reflect the long-held understanding that a tenant, even one who continues to hold land unlawfully, is different from a trespasser.[6] In their Appellants' Brief (at 33-34), plaintiffs incorrectly argue that it is a "bedrock property-law principle" that a tenant who exceeds the limits of consent commits a trespass, relying on *Donahue Schriber Really Grp. v. Nu Creation Outreach*, 181 Cal. Rptr. 3d 577, 582 (Ct. App. 2014). But that case involved persons who entered a

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[6] *See Curtis v. Meadows*, 86 S.E. 886, 886 (W. Va. 1915) (distinguishing between "mere scrambling possession - the possession of a momentary trespasser or intruder" and "a complete possession, which has ripened into a peaceable occupancy" for purposes of forceable entry); *Hoag v. Pierce*, 28 Cal. 188 (1865) ("If the possession of the plaintiff was not actual, and of sufficiently long standing to become, to a legal intent, peaceable, then he was not in a condition to maintain his action.").

shopping mall to solicit charitable donations and refused to leave when asked, and thereby "exceeded the scope of consent given for entry." *Id.* at 1178. They were trespassers, never tenants. At common law, "[a] trespass [would] not lie against a tenant at sufferance"—that is, a holdover tenant—before the landlord retook the property. *Holt's Lessee v. Smith*, 1 H. & McH. 273, 273; 1768 Md. LEXIS 2, at *3 (1768).[7] Indeed, the tenant—who held the right of possession and with it the right to exclude—could maintain an action in trespass *against a landlord*, even where the landlord had better title to the lands. *Larue*, 26 Ind. 386.

In sum, history shows that in the Anglo-American legal tradition an out-of-possession landlord's right to exclude a tenant has always been subject to significant governmental restrictions. Landlords have

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[7] *See Williams v. Snidow*, 4 Leigh [31 Va.] 14, 18 (1832) ("owner cannot maintain trespass against a tenant by sufferance, as he might against a stranger" (quotation marks omitted)); *Xerox Corp. v. Listmark Computer Sys.*, 142 N.J. Super. 232, 241 (Super Ct. App. Div. 1976) ("While the tenant at sufferance is in possession wrongfully, he is not a trespasser because he entered lawfully."); *Anello v. Vinci*, 142 Vt. 583, 586, (1983) ("[A] tenant who holds over after his lease is terminated by proper notice to quit cannot be held liable as a trespasser, because he entered upon the land rightfully."). In some jurisdictions, historically, "landlords were entitled to treat holdover tenants as trespassers," until the state adopted legislation "to maintain the status quo of a tenant's occupancy and use of leased property for a short period of time during which a landlord can pursue summary eviction." *Bateman v. 317 Rehoboth Ave., LLC*, 878 A.2d 1176, 1182 (Del. Ch. 2005).

not traditionally had an immediate right to exclude tenants from their rental units the moment that the tenant missed a rent payment or overstayed a lease. Once landlords gave up their right of possession to a tenant, there were restrictions on their ability to exclude that tenant. For centuries, landlords have had to resort to various time-consuming legal procedures to regain physical possession of their property because courts are not "rubber stamps for landlords seeking to evict their tenants." *Pernell*, 416 U.S. at 385. A throughline connects these pre-Founding, Founding, and Reconstruction Era "background restrictions on property rights," *Cedar Point*, 594 U.S. at 160, with more recent attempts to protect tenants by regulating the landlord's right to exclude, like the City of Los Angeles's rent regulations.

3. The Supreme Court's physical-taking jurisprudence reflects that landlords do not have an unfettered right to exclude.

Consistent with centuries of historical practice, the Supreme Court's has repeatedly emphasized that while state and local governments cannot compel landowners to rent a unit or prohibit them from terminating a tenancy without providing just compensation, they may restrict how a property is used, including by regulating permissible rents and eviction procedures without effecting a taking. *Yee v. City of*

Escondido, 503 U.S. 519, 528–29 (1992). That foundational distinction dates back at least to World War I–era rent-control cases and has been reiterated time and again.[8]

Recently, in *Cedar Point*, the Court, yet again, reenforced the distinction between impermissible regulations that physically "take" property interests without compensation and use restrictions "that restrict an owner's ability to use his own property." 594 U.S. at 148–49. In the latter case, only "a regulation [that] goes too far it will be recognized as a taking." *Id.* (quotation marks omitted).

The same thread connects *Alabama Association of Realtors v. Department of Health and Human Services*, in which the Court implied that the complete moratorium on evictions imposed by U.S. Centers for Disease Control and Prevention during the Covid-19 pandemic intruded on the right to exclude. 594 U.S. 758, 765 (2021) (per curiam). Justice Thomas later expounded on this statement when he emphasized that, in the takings context, there is a distinction between a complete

[8] The Supreme Court held that federal wartime rent control was not a taking because it did not "require any person … to offer any accommodations for rent," but was merely a price-fixing law. *Bowles v. Willingham*, 321 U.S. 503, 517 (1944) (quotation marks omitted); *see also Block*, 256 U.S. at 156 ("[I]f to answer one need the legislature may limit height[,] to answer another it may limit rent.").

prohibition of removal, like the one at issue in *Alabama Association*, and a mere limitation on removal, as was at issue in *Yee*. As he explained, "an eviction moratorium would plainly seem to interfere with a landlord's right to exclude," whereas a statute that "constrained landlords' right to evict [but] was not an outright prohibition on evictions for nonpayment of rent" would not effect a per se taking. *GHP Mgmt. Corp. v. City of Los Angeles, California*, 145 S. Ct. 2615, 2616–17 (2025) (Thomas, J., dissenting from denial of certiorari).

The Supreme Court's jurisprudence, which holds that regulations that restrict but do not prohibit evictions are not physical takings, reflects "longstanding background restrictions on property rights." *Cedar Point*, 594 U.S. at 160. Thus, the underlying premise of plaintiffs' physical-taking claim—that the challenged rent regulations "take" their right to exclude—is based on a misconceived understanding of the historical property rights of landlords.

B. Plaintiffs' purely facial challenge raises acute federalism concerns that should engender particular skepticism.

Plaintiffs' claims are particularly misconceived because their purely facial challenge conflicts with principles of judicial restraint and

the separation of powers in a manner that is deeply in tension with federalist structure.

Facial challenges, which seek to invalidate a law in all its applications, are disfavored because, among other things, invalidating a duly enacted state or local law can lead to the formulation of constitutional rules that are unnecessarily expansive, "short-circuit[ing] the democratic process," *Wash. State Grange v. Wash. State Republican Party*, 552 U.S. 442, 451 (2008), and "frustrat[ing] the intent of the elected representatives of the people," *Ayotte v. Planned Parenthood*, 546 U.S. 320, 329 (2006) (citation omitted).

This is particularly problematic in areas like land use and regulation of the landlord–tenant relationship, where states have significant regulatory authority, as it undermines the states' ability to experiment with laws tailored to their unique circumstances. *See Lindsey*, 405 U.S. at 66-69 ("The substantive law of landlord–tenant relations differs widely in the various States" because "[t]he Constitution has not federalized the substantive law of landlord–tenant relations."); *New State Ice Co. v. Liebmann*, 285 U.S. 262, 311 (1932) (a "happy" feature of federalism is that "a single courageous State may, if its citizens choose, serve as a laboratory," and "try novel social and economic experiments without risk to the rest of the country"). For all these reasons, facial

challenges are "the most difficult challenge[s] to mount successfully," and plaintiffs must establish that there are "no set of circumstances" under which the regulation would be valid. *United States v. Salerno*, 481 U.S. 739, 745 (1987).

Courts should not facially invalidate locally enacted rent and eviction regulations merely because an individual plaintiff claims to be unable to remove a specific tenant because of the interplay of some of the challenged rent regulations and the particular circumstances (App. Br. 30). A particular plaintiff's alleged inability to comply with the procedures for removal does not mean the law prohibits eviction on its face. Indeed, here, other landlords surely could follow Los Angeles's eviction procedures and pursue back-rent in small claims court to make themselves whole or pay a relocation fee to evict a tenant. This Court should not permit plaintiffs to seek invalidation of local legislation unless they have shown there is "no set of circumstances" in which a landlord would be able to evict a tenant from a regulated unit. *Salerno*, 481 U.S. at 745.

Plaintiffs strategically chose not to pursue an as-applied challenge, which would have allowed this Court to address constitutional issues in the context of their specific circumstances, while minimizing unnecessary judicial interference with Los Angeles's legitimate legislative processes. *Gonzales v. Carhart*, 550 U.S. 124, 168 (2007); *Ayotte*, 546

U.S. at 329. They have instead pursued purely facial claims. And Los Angeles has not "taken" plaintiffs' right to exclude as a facial matter, but merely regulated their ability to set rents and evict tenants, just as governments have done for centuries in the Anglo-American tradition.

CONCLUSION

This Court should affirm.

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January 27, 2026

Respectfully submitted,

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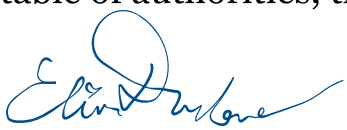
CERTIFICATE OF COMPLIANCE

I hereby certify that this brief was prepared using Microsoft Word, and according to that software, it contains 4,494 words, not including the table of contents, table of authorities, this certificate, and the cover.



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