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, Case No. 5:24-cv-02679-JGB (SHKx)
Hon. Jesus G. Bernal

BRIEF OF LAW PROFESSORS AS *AMICI CURIAE* SUPPORTING AFFIRMANCE AND IN SUPPORT OF APPELLEE CITY OF LOS ANGELES AND APPELLEE INTERVENOR-DEFENDANT STRATEGIC ACTIONS FOR A JUST ECONOMY

BIRD, MARELLA, RHOW,
LINCENBERG, DROOKS &
NESSIM, LLP
Sharon Mayer
Alexander H. Tran
Emily M. Grant

1875 Century Park East, 23rd Floor
Los Angeles, CA 90067

Counsel for Law Professor Amici Curiae

TABLE OF CONTENTS

Page(s)

I. INTERESTS OF AMICI CURIAE 1

II. BACKGROUND 3

III. DISCUSSION 5

A. THE LANDLORD-TENANT RELATIONSHIP HAS NEVER FALLEN WITHIN THE CATEGORY OF *PER SE* PHYSICAL TAKINGS. 7

1. The Common Law Landlord-Tenant Relationship is Grounded in the Affirmative Grant of the Right to Possess. 7

2. Longstanding Precedent Does Not Treat Rent Control and Eviction Limits as *Per Se* Takings Because Tenants are not “Invaders.” 11

B. *CEDAR POINT* DOES NOT IMPACT TAKINGS ANALYSIS AS IT RELATES TO RENT STABILIZATION ORDINANCES. 15

1. *Cedar Point* Addressed State-Authorized Entry By Third Parties With No Invitation, Not Invited Occupants. 16

2. *Cedar Point* Was Expressly Narrow and Contained Numerous Express Exceptions. 20

3. Reading *Cedar Point* to Transform Rent Stabilization into a *Per Se* Taking Would Upend a Century of Precedent Without Express Direction From the Supreme Court. 24

C. THE REGULATORY TAKINGS FRAMEWORK IS THE APPROPRIATE FRAMEWORK FOR RENT STABILIZATION. 26

IV. CONCLUSION 30

APPENDIX 31

CERTIFICATE OF COMPLIANCE RULE 32(a)(7)(c) 33

CERTIFICATE OF SERVICE 35

TABLE OF AUTHORITIES

Page(s)

Cases

Armstrong v. United States,
364 U.S. 40 (1960)....................10

Ballinger v. City of Oakland,
24 F.4th 1287 (9th Cir. 2022)....................5

Block v. Hirsh,
256 U.S. 135 (1921)....................12

Cedar Point Nursery v. Hassid,
594 U.S. 139 (2021).................... *passim*

F.C.C. v. Fla. Power Corp.,
480 U.S. 245 (1987).................... 4, 12, 13, 14

GHP Mgmt. Corp. v. City of Los Angeles, California,
145 S. Ct. 2615 (2025)....................13, 14

Heart of Atlanta Motel, Inc. v. United States,
379 U.S. 241 (1964).................... 13, 23, 26

Horne v. Dep't of Agric.,
576 U.S. 350 (2015)....................23

Javins v. First National Realty Corp.,
428 F.2d 1071 (D.C. Cir. 1970).................... 10

Kaiser Aetna v. United States,
444 U.S. 164 (1979)....................17

Loretto v. Teleprompter Manhattan CATV Corp.,
458 U.S. 419 (1982).................... 11, 17

Nollan v. California Coastal Comm'n,
483 U.S. 825 (1987) 17, 23

Nunez-Reyes v. Holder,
646 F.3d 684 (9th Cir. 2011) 25

Pa. Coal Co. v. Mahon,
260 U.S. 393(1922) 28

Penn. Cent. Transp. Co. v. New York City,
438 U.S. 104 (1978) 5, 7, 28, 29

Pennell v. San Jose,
485 U.S. 1 (1988) 12

PruneYard Shopping Ctr. v. Robins,
447 U.S. 74 (1980) 10, 13, 22, 23

Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency,
535 U.S. 302 (2002) 25

United States v. Causby,
328 U.S. 256 (1946) 17

Yee v. City of Escondido,
503 U.S. 519 (1992) .... *passim*

Ordinances

Los Angeles Rent Stabilization Ordinance ("LARSO") .... *passim*

Other Authorities

Bethany R. Berger, *Property and the Right to Enter*,
80 WASH. & LEE L. REV. 71 (2023) 9, 19, 21

Cedar Point Nursery v. Hassid,
33 YALE J.L. & HUM. 307 (2022) 18

Nadav Shoked, *American Courts' Image of a Tenant*,
117 NW. U. L. REV. 251 (2022) 8, 10

Randy Gerchick, *Comment, No Easy Way Out: Making the Summary Eviction a Fairer and More Efficient Alternative*,
41 U.C.L.A. L. REV. 759 (1994) 9

Tom Stanley-Becker, *Note, Not a Physical Taking: Defending Rent Control Against New Constitutional Challenges*,
22 GEO. J.L. & PUB. POL'Y 1131 (2024)..9

Thomas W. Merrill, *The Right to Exclude*,
77 N.Y.U. L. REV. 1137, 1138-39 (2002) 20

U.S. Constitution Fifth Amendment..11

U.S. Constitution 11

I. INTERESTS OF AMICI CURIAE

Amici are law professors from around the country,[1] specializing in constitutional law, property law, and local government law. They share an interest in preserving the academic and doctrinal distinction between the individual property rights guaranteed by the Constitution—particularly those that protect landowners from forced physical invasion—and the longstanding authority of governments to regulate the terms and incidents of possessory relationships that landowners have voluntarily created by permitting others to occupy and use their property, especially in the landlord-tenant context.

Amici support the district court's dismissal of the Appellants' complaint on the basis that none of the challenged rent-stabilization provisions is subject to analysis under the *per se* physical taking framework. That conclusion accords with Supreme Court and Ninth Circuit precedent distinguishing government-compelled physical occupations from regulations that govern an existing landlord-tenant relationship. *Amici* submit this brief to lend their expertise to support

---

[1] A full list of *amici* law professors is provided in the Appendix.

the specific proposition that none of the provisions challenged under the Takings Clause should be analyzed under the *per se* categorical framework, as Appellants contend.

Amici submit this brief to aid the Court in placing the Takings Clause question within the framework of established property and takings doctrine, the historical development of landlord-tenant law, and the narrow scope of *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021) ("*Cedar Point*"). Resolving the Takings Clause question within established doctrinal frameworks—rather than expanding *per se* rules beyond their precedential, historical, and conceptual limits—promotes stability, reliance, and coherence in property law.

All parties have consented to the filing of this brief. No party's counsel authored the brief in whole or in part; no party or party's counsel contributed money intended to fund preparing or submitting the brief; and no other person other than *amici*, or their counsel, contributed money that was intended to fund preparing or submitting this brief.

II. BACKGROUND

The Los Angeles Rent Stabilization Ordinance ("LARSO" or the "Ordinance") was adopted in 1979 and has since governed rent levels and eviction practices for covered residential rental units. From the outset, the Ordinance limited rent increases for existing tenants and restricted eviction to specified grounds, while allowing landlords to seek various adjustments to ensure a "just and reasonable return" under the Ordinance.

Although this appeal concerns the constitutionality of four provisions operating within LARSO's established rent-stabilization framework, only three are challenged under the Takings Clause. Specifically, Plaintiffs-Appellants challenge (1) the temporary ordinance limiting annual rent increases to 4 percent during a defined period in 2024 (the "4% Rent-Increase Cap"); (2) a restriction barring landlords from evicting tenants for non-payment of rent where the amount owed is less than one month of fair market rent (the "FMR Eviction restriction"); and (3) requirements that landlords satisfy specified conditions, including payment of relocation assistance, before carrying out certain no-fault evictions (such as an owner's decision to move a

family member into the unit) ("the Relocation Fee Requirement"). Collectively, *amici* refer to these three provisions as the "Challenged LARSO Measures."

The district court correctly concluded that none of these Challenged LARSO Measures effects a physical *per se* taking because each regulates a relationship grounded in the landlord's voluntary consent to rent or let their property. For the FMR Eviction Restriction, the district court held that the provision "simply addresses the 'terms of eviction'" and regulates the terms of an existing, voluntarily created landlord-tenant relationship and therefore does not constitute a physical occupation under *Yee v. City of Escondido*, 503 U.S. 519 (1992) ("*Yee*") and related precedent. ER14 (quoting *Yee*, 503 at 528). For the temporary 4% Rent-Increase Cap, the district court concluded that rate regulation of an ongoing consensual tenancy is not a categorical taking, relying on *F.C.C. v. Fla. Power Corp.*, 480 U.S. 245, 252 (1987) ("*Florida Power*"), and emphasized that landlords choose to rent their property and are subject to regulation once they do so. ER18. Finally, for the Relocation-Fee Requirement applicable to certain no-fault evictions, the district court held that the ordinance imposes a monetary obligation

tied to the landlord's chosen use of the property and "is a regulation of the landlord-tenant relationship, not an unconstitutional taking of a specific and identifiable property interest," following the Ninth Circuit's decision in *Ballinger v. City of Oakland,* 24 F.4th 1287, 1291 (9th Cir. 2022). ER20 (quoting *Ballinger*, 24 F.4th at 1292).

Plaintiffs appealed.

III. DISCUSSION

Amici submit that the district court correctly treated measures such as rent-increase limits, eviction standards, and relocation-assistance requirements as regulations of a consensual tenancy rather than as categorical physical invasions by the government. *Amici* submit this brief, based on their expertise in constitutional property law, to provide the following additional points to aid this Court in its review of this appeal.

First, the Supreme Court has long treated landlord-tenant regulations, such as rent control, eviction limits, and tenancy-stability measures, as regulatory restrictions subject to the ad hoc balancing framework in *Penn. Cent. Transp. Co. v. New York City*, 438 U.S. 104 (1978) ("*Penn Central*") and its progeny. That approach evolved out of

the common law's treatment of the landlord-tenant relationship, and focuses on the proposition that the tenant is not an "invader," for whom the landlord should expect compensation for his or her invasion, but rather an invitee holding consensual possessory rights. The Supreme Court has repeatedly reaffirmed that a landlord who voluntarily rents or lets their property cannot later invoke the *per se* physical-takings framework to challenge regulations governing that tenancy, and it has consistently distinguished government-compelled occupation by strangers, or third parties to the possessory relationship, from regulation of consensual landlord-tenant relations.

Second, the Supreme Court's decision in *Cedar Point* is narrow both in its holding and its rationale. *Cedar Point* addressed uninvited third-party access and expanded the temporal dimension of *per se* takings challenges to forced physical invasions but left intact the foundational distinction between compelled entries by strangers and regulations of invited occupants. It did not wholly redefine physical invasions to include invitees or tenants, and did not suggest an intent to overturn decades of precedent distinguishing voluntary tenancies from government-imposed physical occupations.

Finally, rent stabilization ordinances such as LARSO regulate price, timing of eviction, and conditions under which a landlord may repossess property. These classic use-regulation practices should be evaluated under *Penn Central* rather than the *per se* physical-takings framework. The *Penn Central* framework provides the appropriate doctrinal structure for assessing their economic impact on landlords while allowing states and local governments to regulate a consensual relationship they have long been permitted to regulate within constitutional bounds.

A. THE LANDLORD-TENANT RELATIONSHIP HAS NEVER FALLEN WITHIN THE CATEGORY OF *PER SE* PHYSICAL TAKINGS.

1. The Common Law Landlord-Tenant Relationship is Grounded in the Affirmative Grant of the Right to Possess.

At historical common law, the landlord-tenant relationship arose from the property owner's affirmative and voluntary grant of possession to an occupant, rather than from any background or governmental obligation to admit others to the property. A landlord's decision to rent

property was thus understood not as a surrender of ownership, but as a voluntary conveyance of the right to possess.[2] Although the tenancy was created by the landlord's conveyance of a possessory estate, that conveyance did not exhaust the legal framework governing the relationship: common-law tenancies carried longstanding structural duties—such as the covenant of quiet enjoyment and limits on wrongful eviction—that operated independently of any explicit contractual terms. By leasing space, the landlord invited another onto the property and transformed that individual from a potential trespasser into a tenant with a legally protected property right to enter and remain, subject to established common-law constraints.[3]

Although early common law permitted landlords to reclaim possession through self-help eviction, that did not undermine the tenant's initial lawful and consensual possession, which was implied in every lease by the landlord's duty to deliver possession under the

---

[2] *See* Nadav Shoked, *American Courts' Image of a Tenant*, 117 NW. U. L. REV. 251, 256 (2022) (up until the second half of twentieth century, a lease was treated as a "grant of an estate" conferring a "formal right to the specific property for the defined period").

[3] *Id.*

covenant of quiet enjoyment.[4] Even the common law treated tenants as fundamentally distinct from strangers: a tenant entered by the landlord's invitation, and not as an unwanted interloper whose presence displaced the owner's right to exclude.[5] The common law had long recognized the right to exclude, but it did not treat that right as absolute or incompatible with voluntary entry.[6]

Because tenants occupy leaseholds pursuant to consensual possessory rights, regulations governing the landlord-tenant relationship regulate the terms of an owner's voluntary transfer of the possessory "sticks" in the bundle of property rights, rather than imposing an occupation by force. Although the right to exclude is an "essential stick," "not every destruction or injury to property by governmental action" amounts to a physical invasion or denial of the

---

[4] *See generally* Bethany R. Berger, *Property and the Right to Enter*, 80 WASH. & LEE L. REV. 71, 104-05 (2023) (hereinafter "Berger, Right to Enter"); *see also* Randy Gerchick, *Comment, No Easy Way Out: Making the Summary Eviction a Fairer and More Efficient Alternativ*e, 41 U.C.L.A. L. REV. 759, 771-77 (1994).

[5] *See generally* Tom Stanley-Becker, *Note*, Not *a Physical Taking: Defending Rent Control Against New Constitutional Challenges*, 22 GEO. J.L. & PUB. POL'Y 1131 (2024).

[6] Berger, *Right to Enter*, *supra* note 4, at 101-05 (discussing various rights to enter and focusing on trespass and nonconsensual entries).

right to exclude, particularly where—following the owner's decision to open the property to others—lawful regulation affects exclusion only incidentally. *PruneYard Shopping Ctr. v. Robins*, 447 U.S. 74, 82 (1980) (quoting *Armstrong v. United States*, 364 U.S. 40, 48 (1960)).

Over time, courts and legislatures increasingly limited the right to evict by abolishing self-help in residential tenancies, requiring judicial process, and conditioning eviction on minimum standards of habitability.[7] While the landscape of the obligations the landowner owed its tenant has shifted dramatically, the underlying legal and doctrinal premise has not: a lease is a voluntary conveyance by a landowner to possess her property. Once a landowner has made that conveyance, she may be subject to regulation of its terms, but the premise that the possession was voluntary remains controlling.

---

[7] *See, e.g.*, *Javins v. First National Realty Corp.*, 428 F.2d 1071, 1082 (D.C. Cir. 1970) (holding residential leases in Washington, D.C. contained an implied warranty of habitability grounded in housing-code compliance); *see also* Shoked, *supra* note 2, at 263-66 (discussing legislative and judicial trends).

2. Longstanding Precedent Does Not Treat Rent Control and Eviction Limits as *Per Se* Takings Because Tenants are not "Invaders."

While the U.S. Constitution provides strong protection for property rights for landowners under the Fifth Amendment, landowners are not immune from regulation of their property.

The Supreme Court has long drawn a doctrinal distinction between government action that compels a landowner to submit to a physical occupation of property—such as the owner of an apartment building whose roof was utilized, without consent, to mount cables and switch boxes for the provision of cable television service to tenants[8]—and regulations that govern the use of property within an existing consensual relationship, such as restrictions on evictions. The Supreme

[8] *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 422, 441 (1982) ("[A] permanent physical occupation of property is a taking. In such a case, the property owner entertains a historically rooted expectation of compensation, and the character of the invasion is qualitatively more intrusive than perhaps any other category of property regulation. We do not, however, question the equally substantial authority upholding a State's broad power to impose appropriate restrictions upon an owner's use of his property.")

Court's most recent case addressing the latter category, *Yee*, articulated and applied this distinction in the landlord-tenant context.

Yee made clear that the *per se* physical takings doctrine is limited to situations in which the government "compel[s] a landowner to suffer the physical occupation of his property." 503 U.S. at 538-39. Where, by contrast, the owner has voluntarily opened her property to possession by another, and the challenged law regulates the "use of their land by regulating the relationship between landlord and tenant," the regulation does not effect a *per se* taking. *Id.* at 529.

The holding in *Yee* followed a consistent line of cases rejecting efforts to recharacterize landlord-tenant regulation as akin to physical invasions or occupation.[9] As the Supreme Court explained in *FCC v. Florida Power Corp.*, "statutes regulating the economic relations of landlords and tenants are not *per se* takings." 480 U.S. 245, 252 (1987)

---

[9] *See also Pennell v. San Jose*, 485 U.S. 1, 12, n.6 (1988) ("[W]e have 'consistently affirmed that States have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular without paying compensation for all economic injuries that such regulation entails.'" (quoting *Loretto*, 458 U.S. at 440)); *see also Florida Power*, 480 U.S. at 252 (1987) ("[S]tatutes regulating the economic relations of landlords and tenants are not *per se* takings."); *Block v. Hirsh*, 256 U.S. 135, 156 (1921) (holding an eviction restriction was not a taking).

("*Florida Power*"). What triggers heightened scrutiny, the Supreme Court emphasized, is the "element of required acquiescence . . . at the heart of the concept of occupation." *Id.* ("[I]t is the invitation, not the rent, that makes the difference."). That principle applies regardless of whether the regulation increases rents or makes eviction more difficult.[10] When landowners "voluntarily open their property to occupation by others, petitioners cannot assert a *per se* right to compensation based on their inability to exclude particular individuals," however substantial its economic character. *Yee,* 503 U.S. at 531.[11]

Very recent Ninth Circuit caselaw similarly adheres to this clear doctrinal line. In *GHP Management Corp. v. City of Los Angeles*, this

---

[10] *Yee* held that "depriv[ing] petitioners of the ability to choose their incoming tenants . . . does not convert regulation into the unwanted physical occupation of land." 503 U.S. at 531. Instead, that "effect may be relevant to a regulatory taking argument, as it may be one factor a reviewing court would wish to consider in determining whether the ordinance unjustly imposes a burden on petitioners that should 'be compensated by the government, rather than remain[ing] disproportionately concentrated on a few persons.'" *Id.* (quoting *Penn Central*, 438 U.S. at 124).

[11] *See also Heart of Atlanta Motel, Inc. v. United States,* 379 U.S. 241, 259, 261 (1964) ("[A]ppellant has no 'right' to select its guests as it sees fit, free from governmental regulation."); *PruneYard,* 447 U.S. at 82-84 (because the property was a "large commercial complex . . . [that] is open to the public at large," it was not "determinative" that the appellees "may have 'physically invaded' the property).

court rejected a *per se* takings challenge to a COVID-19 eviction moratorium, explaining that "[u]nder the Supreme Court's current jurisprudence, a statute that merely adjusts the existing relationship between landlord and tenant, including adjusting rental amount, terms of eviction, and even the identity of the tenant, does not effect a taking." No. 23-55013, 2024 WL 2795190, at *1 (9th Cir. May 31, 2024), *cert. denied sub nom. GHP Mgmt. Corp. v. City of Los Angeles, California*, 145 S. Ct. 2615 (2025). Relying squarely on *Yee* and *Florida Power*, this court emphasized that the "Supreme Court has made an 'unambiguous distinction between a commercial lessee and an interloper with a government license.'" *Id.* at *1 (quoting *Florida Power*, 480 U.S. at 252-53).[12]

At bottom, efforts to characterize rent-stabilization measures as *per se* takings, as Appellants contend, collapse a foundational distinction in takings law: the difference between compelled physical

[12] As *amici* discuss further herein, the Ninth Circuit also properly distinguished *Cedar Point*, explaining that an "interloper with a government license"—such as the union organizers in that case—is fundamentally different from tenants and lessees, a distinction that fits comfortably within the Supreme Court's jurisprudence drawing an unambiguous line between the two.

invasion and regulation of a consensual possessory relationship. A tenant in possession pursuant to a lease is not a stranger imposed on the property by the government, but an invitee whose presence arises from the owner's own grant of possession. Regulation of that relationship therefore presupposes consent rather than overrides it.

For that reason, landlord-tenant law has long been treated as a form of use regulation, not physical occupation, and the Supreme Court has never applied the *per se* takings doctrine to it. That boundary—rooted in common-law concepts of invitation, consent, and reciprocal obligation—marks the outer limit of *Cedar Point* and should be reaffirmed here.

B. *CEDAR POINT* DOES NOT IMPACT TAKINGS ANALYSIS AS IT RELATES TO RENT STABILIZATION ORDINANCES.

Notwithstanding settled landlord-tenant law and longstanding Supreme Court precedent, Appellants argue that the Challenged LARSO Measures effect a *per se* taking under the Supreme Court's 2021 decision in *Cedar Point* because the Challenged LARSO Measures purportedly infringe on landlords' ability to exclude their tenants. That reading is both overbroad and incorrect. *Amici* submit that *Cedar Point*

does not alter the takings analysis as applied to the Challenged LARSO Measures in this case.

1. ***Cedar Point* Addressed State-Authorized Entry By Third Parties With No Invitation, Not Invited Occupants.**

Cedar Point concerned a regulation that granted third parties, union organizers, the right to "traverse [a farm] at will for three hours a day, 120 days a year," even though the farm was "closed to the public" and the organizers entered without the landowners' permission. *Cedar Point*, 594 U.S. at 152, 157. The *Cedar Point* Court held that this access regulation "appropriates a right to physically invade the growers' property—to literally 'take access,' as the regulation provides." *Id.* at 152.

In reaching that holding, *Cedar Point* surveyed the physical takings jurisprudence involving both permanent and limited invasions of private property. *Id.* at 149-52 (citing cases). Each of those cases, according to Chief Justice Roberts, involved a government-authorized intrusion to the landlord's right to exclude, "one of the most treasured' rights of property ownership"—whether through installing a cable box

on a building, recurrent low-flying military aircraft over private homes, or appropriation of a public easement across a private marina (or beach). *Id.*[13] In each instance, the invasion was carried out by non-occupants who had neither an invitation to enter the property nor any possessory relationship with the property owner. *Id.*

The union organizers in *Cedar Point* thus stood in the same posture as the airplanes, cables, and easements addressed in prior cases: they were non-resident, non-consensual entrants onto property closed to them. The Supreme Court emphasized that the regulation did not merely restrict how owners used their land, but instead "appropriates for the enjoyment of ***third parties*** the owners' right to exclude," triggering *per se* takings analysis. *Id.* at 149 (emphasis added). Accordingly, the doctrinal shift in *Cedar Point* resulted from the

[13] *See Loretto*, 458 U.S. at 423 (installing cable box is a *per se* taking; *United States v. Causby*, 328 U.S. 256, 259 (1946) (flying aircraft over a farm and frightening chickens to death is a *per se* taking); *Kaiser Aetna v. United States*, 444 U.S. 164, 167 (1979) (requiring a private developer to permit a public easement through its marina is a *per se* taking); *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 831 (1987) (issuing a permit to rebuilt a private house but requiring it to have a public easement on the private portion of the beach).

Supreme Court's conclusion that the limited and intermittent nature of the invasion did not remove it from the *per se* category of takings.

Rent stabilization ordinances, including the Challenged LARSO Measures, bear no resemblance to the regulation at issue in *Cedar Point*. Put most simply, *Cedar Point*—and the cases leading up to it—did not address a relationship between the landowner and a tenant she had invited to lease her property, or a property that a landowner had opened to the public. *Cedar Point* expressly distinguished the latter circumstances, stating that "[l]imitations on how a business generally open to the public may treat individuals on the premises are readily distinguishable from regulations granting a right to invade property closed to the public." *Id.* at 157.

Scholars have recognized that *Cedar Point* marked a departure from the Court's historical *per se* takings doctrine.[14] In particular, the Supreme Court clarified that, with respect to non-consensual third-party invasions, it does not matter whether "the physical

[14] *See generally*, Bethany R. Berger, *Eliding Original Understanding in* Cedar Point Nursery v. Hassid, 33 YALE J.L. & HUM. 307 (2022) (hereinafter Berger, *Cedar Point*) (analyzing *Cedar Point*'s departure from historical takings doctrine).

appropriation . . . is permanent or temporary," *id.* at 153,[15] or whether it is continuous or intermittent, big or small.[16] That departure is meaningful.[17] But this meaningful *per se* doctrinal shift does not erase the bright line difference between different types of takings (namely, *per se* takings and regulatory takings). Indeed, as discussed herein, the Supreme Court's *per se* takings carveouts—such as *Lucas*'s total economic-wipeout rule and *Cedar Point*'s compelled-access holding—have been confined to truly exceptional circumstances.

Cedar Point's expansion of the *per se* analysis is best understood to apply only to government-authorized invasions by uninvited third parties. Because the right to exclude is "universally held to be the most fundamental element of property," a landlord who voluntarily creates a tenancy has already ceded, at least partially, that core exclusionary

---

[15] The dissenting view held that the *Cedar Point* regulation could not be considered a *per se* taking because it was an access regulation, not a physical occupation. *Id.* at 152 (discussing the dissenting view that "the access regulation did not qualify as a *per se* taking because, although it grants a right to physically invade the growers' property, it does not allow for permanent and continuous access '24 hours a day, 365 days a year.'")

[16] *See* Stanley-Becker, *supra* note 5, at 1143.

[17] Berger, *Cedar Point*, *supra* note 14, at 312-13.

right to the tenant—and, as settled law makes clear, may not enter the premises without the tenant's consent.[18] With this foundational principle in mind, nothing in *Cedar Point* suggests that every regulation affecting an ongoing landlord-tenant relationship now constitutes a physical taking. The decision did not convert continued occupancy by invited tenants into a *per se* taking, nor did it unsettle the Supreme Court's decades of well-settled landlord-tenant jurisprudence.

2. ***Cedar Point* Was Expressly Narrow and Contained Numerous Express Exceptions.**

In *Cedar Point*, the Supreme Court repeatedly emphasized the application of its holdings to the facts and took care to identify circumstances in which government regulations affecting access or exclusion do not give rise to *per se* takings. Responding to the concern that its decision would "endanger a host of state and federal government activities involving entry onto private property," the Supreme Court expressly rejected that characterization and

[18] *See generally* Thomas W. Merrill, *The Right to Exclude*, 77 N.Y.U. L. REV. 1137, 1138-39 (2002).

underscored that its analysis was tethered closely to the particular regulation before it. *Id.* at 159-60.

To make that point clear, the Supreme Court identified multiple categories of government action that fall outside *Cedar Point*'s *per se* rule.[19] Summarizing those distinctions, Chief Justice Roberts explained:

> "None of these considerations undermine our determination that the access regulation here gives rise to a *per se* physical taking. Unlike a mere trespass, the regulation grants a formal entitlement to physically invade the growers' land. Unlike a law enforcement search, no traditional background principle of property law requires the growers to admit union organizers onto their premises. And unlike standard health and safety inspections, the access regulation is not germane to any benefit provided to agricultural employers or any risk posed to the public . . . The access regulation amounts to simple appropriation of private property."

Id. at 162. This passage makes clear that the *per se* inquiry does not turn on the bare fact that someone other than the landowner is physically present on the property. Rather, the Court articulated a far more limited analysis that asks whether the regulation compels entry by persons who would otherwise have no right to be there, whether the entry is justified by a background principle of property law, and

[19] Berger, *Right to Enter*, *supra* note 4, at 121-25 (discussing trespass, abating nuisance, permitting restrictions, and public necessity trespasses as exceptions to the physical invasion rule).

whether it is tied to a reciprocal benefit or risk traditionally associated with regulation.

Consistent with that narrow framing, the Supreme Court also stressed that its decision did not disturb precedents involving property that owners have already opened to others. *Cedar Point* distinguished a line of cases involving customers and other invitees on precisely that ground: where an owner has already voluntarily granted access, she no longer retains an absolute right to exclude and regulations governing the terms of continued presence are analytically distinct. *Id.* at 156-57. Emphasizing this point, the Court rejected the suggestion that its holding would unsettle ordinary regulatory regimes and reiterated that the right to exclude has always been subject to historically grounded limits.

For example, in explaining why *PruneYard Shopping Center v. Robins*, 447 U.S. 74 (1980)—an access regulation case—did not control, the Supreme Court underscored that the shopping center at issue there was "open to the public," and emphasized that "[l]imitations on how a business generally open to the public may treat individuals on the premises are readily distinguishable from regulations granting a right

to invade property closed to the public." *Id.* at 156 (quoting *Horne v. Dep't of Agric.*, 576 U.S. 350, 364 (2015), and citing *Nollan v. Cal. Coastal Comm'n,* 483 U.S. 825, 832 n.1 (1987)).

That distinction reflects the Supreme Court's broader analytic approach in this section. The regulation in *Cedar Point* was subject to *per se* takings analysis not because it touched the right to exclude in some abstract sense, or because all access regulations are equivalent to physical invasions, but because "no one disputes that, without the access regulation, the growers would have had the right under California law to exclude union organizers from their property." *Id.* at 155. By repeatedly grounding its holding in the elimination of that baseline right—and by repeatedly distinguishing situations in which owners have already consented to occupation—the Supreme Court made clear that its *per se* rule was directed at compelled physical entry by uninvited outsiders, not at regulations governing property relationships writ large.[20]

---

[20] The *Cedar Point* Court also cited *Heart of Atlanta*, implicitly acknowledging that fair-housing and civil-rights regulations operate as use restrictions rather than *per se* physical occupations. *See id.* at 156 (citing *Heart of Atlanta*, 379 U.S. at 261).

3. **Reading *Cedar Point* to Transform Rent Stabilization into a *Per Se* Taking Would Upend a Century of Precedent Without Express Direction From the Supreme Court.**

Appellants' theory would require this Court to treat *Cedar Point* as having silently displaced a century of regulatory takings doctrine governing landlord-tenant regulation and other invitee relationships.

As a threshold issue, nowhere in *Cedar Point* did the Supreme Court purport to overrule—expressly or implicitly—its longstanding precedents governing rent stabilization, leasehold regulation, or voluntarily created possessory interests, including the regulated eviction process itself. Under the appellants' logic, every additional day a tenant remains in possession pursuant to such lawful procedures could be recast as a compensable physical taking, which is an outcome flatly at odds with the Supreme Court's takings jurisprudence. Because the Supreme Court did not expressly overrule its jurisprudence, *Yee* remains the controlling decision governing the takings analysis over

landlord-tenant regulations.[21] *See Nunez-Reyes v. Holder*, 646 F.3d 684, 692 (9th Cir. 2011) (citing *Rodriguez de Quijas v. Shearson/Am. Express, Inc*., 490 U.S. 477, 484 (1989)). This court is therefore bound by *Yee*.

Moreover, collapsing the distinction between regulatory takings and *per se* physical takings would have consequences far beyond rent stabilization. Many longstanding statutory regimes—including federal and state fair-housing laws—operate by limiting a property owner's discretion to exclude or remove occupants once possession has been granted.[22] If such limits were recharacterized as *per se* physical takings simply because they affect the right to exclude, routine enforcement of the Fair Housing Act's prohibitions on discrimination and retaliation

---

[21] *Cedar Point* referenced *Yee* without expressing any disapproval or suggesting a departure from its holding, instead stating that use restrictions—such as the rent-stabilization regime in *Yee*—are to be analyzed under the *regulatory*-takings framework.

[22] *See, e.g.*, *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 324 (2002) ("Land-use regulations are ubiquitous and most of them impact property values in some tangential way—often in completely unanticipated ways. Treating them all as *per se* takings would transform government regulation into a luxury few governments could afford.").

would be cast into constitutional doubt.[23] Anti-discrimination laws that require landlords to rent to protected classes, refrain from eviction for discriminatory reasons, or reasonably accommodate tenants with disabilities would suddenly resemble compelled physical occupation rather than regulation of ongoing tenancy.[24] The Supreme Court has never treated such laws as appropriations of property.

C. THE REGULATORY TAKINGS FRAMEWORK IS THE APPROPRIATE FRAMEWORK FOR RENT STABILIZATION.

Rent stabilization ordinances regulate the economic terms of a landlord-tenant relationship, not physical access to property.[25] These

---

[23] *See* Stanley-Berger, *supra* note 5, at 1153 (discussing that if rent control is found unconstitutional "on the grounds that any limit on the right to exclude constitutes a taking, it will place fair housing laws into constitutional jeopardy"); *see generally* Berger, *Cedar Point* supra note 14, at 309-12, 327-31 (explaining that treating temporary or regulatory limits on access as *per se* physical takings would destabilize longstanding regulatory and civil-rights regimes that operate by constraining exclusion after possession has been granted).

[24] *See also, e.g.*, *Heart of Atlanta Motel*, 379 U.S. at 261.

[25] *See generally* Stanley-Becker, *supra* note 5, (explaining that landlord-tenant law has long regulated economic terms of possession through legislation); Berger, *Cedar Point, supra* note 14, (warning against collapsing regulatory takings into *per se* rules).

ordinances, like the Challenged LARSO Measures, govern price, the timing and grounds for eviction, and the conditions under which a landlord may recover possession of a unit, but they do not compel entry by third parties or authorize new physical occupation. Rent stabilization ordinances, like LARSO, therefore impose economic burdens only on property owners who have voluntarily chosen to rent their property to tenants. Indeed, because rent stabilization ordinances operate alongside universally accepted state regulations governing summary eviction procedures, accepting a theory that treats any incremental delay in regaining possession as a *per se* taking would imply that even ordinary notice and judicial-process requirements unconstitutionally "transfer" property to tenants—an outcome that would effectively require the Supreme Court to dictate eviction timelines for all states, a result that has never been endorsed.

Because rent stabilization laws concern economic impact rather than compelled, uninvited physical invasion, the regulatory takings framework articulated in *Penn Cent. Transp. Co. v. New York City*, 438 U.S. 104 (1978), provides the appropriate analytical lens for constitutional challenges to such measures. *Penn Central's* test is an "ad

hoc, factual inquiry" used to determine whether government regulation constitutes a regulatory taking requiring compensation. *Id.* at 124-25. The test examines three key factors: (1) the economic impact of the regulation on the property owner, (2) the extent to which the regulation has interfered with distinct investment-backed expectations, and (3) the character of the government regulation. *Id.* This balancing test recognizes that "Government hardly could go on if to some extent values incident to property could not be diminished without paying for every such change in the general law." *Id.* (quoting *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 413 (1922)).

Critically, the doctrinal distinction between *per se* physical takings and regulatory takings does not turn on the magnitude of a regulation's economic effects. The value of an economic impact bears on compensation, not on whether a regulation is classified as a physical appropriation. For example, the Supreme Court explained in *Cedar Point* that a permanent physical occupation is a *per se* taking "regardless whether it results in only a trivial economic loss," while the duration or size of an appropriation "bears only on the amount of

compensation." *Cedar Point*, 594 U.S. at 151 (citing *Loretto*, 458 U.S. at 436-37).

Finally, rent control ordinances reflect legislative policy judgments about how to structure housing markets and manage a consensual relationship that states have long been permitted to regulate within constitutional bounds. The *Penn Central* framework is specifically designed to evaluate whether such economic regulations—balancing public purposes, investment-backed expectations, and overall character—go so far as to require compensation, while preserving the states' authority to regulate use rather than appropriate possession. Applying that framework here respects both the structure of takings doctrine and the institutional role of legislatures in addressing housing conditions.

* * * * * * *

For these foregoing reasons, the district court's judgment should be affirmed. Rent control falls squarely within the longstanding tradition of regulating the economic incidents of landlord-tenant relationships, not within the category of third party invasions. Nothing in *Cedar Point* alters that settled framework, displaces a century of

precedent, or transforms tenants—whom landlords have invited onto their property—into constitutional "invaders." Reading *Cedar Point* to reach rent stabilization would not be a modest extension of existing doctrine, but a sharp departure from it, one that would destabilize settled expectations nationwide and contradict deeply rooted principles of American property law. This Court should decline that invitation and apply the regulatory takings framework the Supreme Court has repeatedly reaffirmed.

IV. CONCLUSION

For these reasons and those in Appellees' briefs, the Court should affirm the district court's decision.

DATED: January 27, 2026

Sharon Mayer
Alexander H. Tran
Emily M. Grant

Bird, Marella, Rhow,
Lincenberg, Drooks & Nessim, LLP

By: */s/ Emily M. Grant*

Attorneys for Law Professor Amici Curiae

APPENDIX

List of *Amici Curiae* Law Professors

Gregory S. Alexander
A. Robert Noll Professor of Law, Emeritus
Cornell Law School

Bethany Berger
Associate Dean for Academic Affairs
Allan D. Vestal Chair in Law Professor
Iowa School of Law

Rose Cuison-Villazor
Professor of Law, and Chancellor's Social Justice Scholar
Rutgers Law School

David A. Dana
Kirkland & Ellis Professor of Law
Professor of Real Estate, Kellogg School of Management (Courtesy)
Director, Program on Sustainability and Food and Animal Law
Northwestern Law School

Nestor M. Davidson
Emma Bloomberg Professor of Real Estate
Harvard University
Graduate School of Design

K-Sue Park
Professor of Law
UCLA School of Law

Shelley Ross Saxer
Laure Sudreau Chair in Law
Caruso School of Law

Sarah Schindler
Professor of Law and Maxine Kurtz Faculty Research Scholar
Director, Environmental and Natural Resources Law Program
University of Denver Sturm College of Law

Christopher Serkin
Elisabeth H. and Granville S. Ridley Jr. Chair in Law
Professor of Management, Owen Graduate School of Management
Vanderbilt University Law School

Nadav Shoked
Professor of Law
Northwestern Law School

Joseph William Singer
Bussey Professor of Law
Harvard Law School

Laura Weinrib
Fred N. Fishman Professor of Constitutional Law
Harvard Law School

Richard Schragger
Walter L. Brown Professor of Law
Roy L. and Rosamond Woodruff Morgan Professor of Law
Director, Program in Law, Communities and the Environment (PLACE)
Senior Fellow, Miller Center
University of Virginia School of Law

CERTIFICATE OF COMPLIANCE RULE 32(a)(7)(c)

Pursuant to Federal Rules of Appellate Procedure, rule 32(a)(7)(c), I certify that the BRIEF OF *AMICI CURIAE* is double spaced, with the exception of quotations that are longer than two lines, and headings and footnotes, as permitted by rule 32(a)(7)(c). The brief is proportionately spaced using 14-point Century Schoolbook typeface.

Relying on my word processor software (MS-Word) to obtain the count, the brief's total word count, excluding the covers, table of contents, table of authorities, statement of related cases, certificate of compliance, and certificate of service, is 5,607 words.

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

/ / /

I certify that the information on this form is true and correct to the best of my knowledge and belief formed after a reasonable inquiry.

DATED: January 27, 2026

Sharon Mayer
Alexander H. Tran
Emily M. Grant

Bird, Marella, Rhow,
Lincenberg, Drooks & Nessim, LLP

By: */s/ Emily M. Grant*

Attorneys for Law Professor Amici Curiae

CERTIFICATE OF SERVICE

The undersigned certifies that on January 27, 2026, an electronic copy of the foregoing was filed with the Clerk of this Court using the CM/ECF system, and that all parties will be served through that system.

DATED: January 27, 2026

Sharon Mayer
Alexander H. Tran
Emily M. Grant

Bird, Marella, Rhow,
Lincenberg, Drooks & Nessim, LLP

By: */s/ Emily M. Grant*
Emily M. Grant
Attorneys for Law Professor Amici Curiae