Nos. 24-435

In the

Supreme Court of the United States

GHP MANAGEMENT CORPORATION, *ET AL.*,

Petitioners,

v.

CITY OF LOS ANGELES, CALIFORNIA, *ET AL.*,

Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF *AMICUS CURIAE* CLAREMONT INSTITUTE'S CENTER FOR CONSTITUTIONAL JURISPRUDENCE IN SUPPORT OF PETITIONERS

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INTEREST OF AMICUS CURIAE[1]

The Center for Constitutional Jurisprudence is the public interest law arm of the Claremont Institute, whose stated mission is to restore the principles of the American founding to their rightful and preeminent authority in our national life, including the right to own and use private property to the exclusion of all others. The Center has previously appeared before this Court as *amicus curiae* in several cases addressing these issues, including *Sheetz v. County of El Dorado*, 601 U.S. 267 (2024) (No. 22-1074); *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021); *Murr v. Wisconsin*, 582 U.S. 383 (2017); *California Building Industry Ass'n v. City of San Jose*, 577 U.S. 1179 (2016); and *Koontz v. St. Johns River Water Management District*, 570 U.S. 595 (2013), to name a few

SUMMARY OF ARGUMENT

During the Covid pandemic panic, the City of Los Angeles enacted an ordinance prohibiting the eviction of renters who stopped paying rent. The purpose of the order was to commandeer landowners' property to serve as places of confinement during the state's "stay at home" order. The Ninth Circuit Court of Appeals ruled that this ordinance commandeering landowners'

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[1] In accordance with Rule 37.6, counsel affirms that no counsel for any party authored this brief in whole or in part and that no person or entity other than *amicus* made a monetary contribution to fund the preparation and submission of this brief. All parties received notice of this brief more than 10 days prior to filing.

property merely "adjusts the existing relationship between landlord and tenant." Pet. App. at 3a. The lower court's reliance on *Yee v. City of Escondido*, 503 U.S. 519 (1992) is misplaced. This ordinance did not "adjust the economic relationship" between landlord and tenant by controlling rents. It actually commandeered the landlords' property and gifted it to the tenants to stay in rent free. That the landlords and tenants had earlier agreed to a tenancy based on the tenants' agreement to pay rent is of no import here. This is no different than an ordinance allowing past customers of a department store to take items from the store without paying for them. The past economic relationship between the store and customer is irrelevant to the current taking of the property.

It does not matter that Los Angeles believes this confiscation of the landlords' property served an important purpose. An important purpose does not free the State from the strictures of the Takings Clause. At most, an important purpose merely satisfies the Fifth Amendment's requirement that the Taking is for a "public use," which this Court has broadened into a "public purpose." *Kelo v. City of New London*, 545 U.S. 469, 506 (2005) (Thomas, J., dissenting).

The Fifth Amendment Takings Clause is unique among the provisions of the Bill of Rights. While government suppression of other rights generally requires something between an important and a compelling interest, the Fifth Amendment merely requires payment of just compensation. Yet state and local governments chafe at even this minimal requirement for the trampling of a fundamental individual right.

The fact that the government can overcome individual rights in property by the mere payment of money does not mean that property rights are a "poor relation" to the other liberties listed in the Bill of Rights. The right to own and use property is a fundamental right that includes the right to exclude others. The Los Angeles ordinance at issue eviscerates that right by requiring property owners to suffer the invasion of their property. The ordinance eliminates state court remedies for removing former renters who have effectively become squatters – occupying property while refusing to pay rent. The Court should grant review in this case to clarify *Yee* that an ordinance that requires property owners to suffer the invasion of their property by renters who choose to become mere squatters, rather than renters, is not an adjustment of economic relationships. It is a confiscation and thus a per se taking.

REASONS FOR GRANTING THE WRIT

I. Review Should Be Granted to Protect the Natural Right to Own and Use Property Which Is a Foundation of Individual Liberty.

This Court has so often characterized individual rights in property as "fundamental" that it is difficult to catalogue each instance. The Court has noted that these rights are among the "sacred rights" secured against "oppressive legislation." *Bartemeyer v. State of Iowa*, 85 U.S. 129, 136 (1873). These rights are the "essence of constitutional liberty." *Johnson v. United States*, 333 U.S. 10, 17 n.8 (1948). In a word, they are "fundamental." *In re Kemmler*, 136 U.S. 436, 448

(1890). Justice Washington noted that rights that are "fundamental" are those that belong "to the citizens of all free governments." *Corfield v. Coryell*, 6 F. Cas. 546, 551 (C.C.E.D. Pa. 1823). He listed individual rights in property as one of the primary categories of fundamental rights. *Id.*

This Court has followed Justice Washington's view, noting that constitutionally protected rights in property cannot be viewed as a "poor relation" with other rights secured by the Bill of Rights. *Dolan v. City of Tigard*, 512 U.S. 374, 392 (1994); *see also Lynch v. Household Fin. Corp.*, 405 U.S. 538, 552 (1972) (citing to John Locke, Blackstone, and John Adams, the Court noted that "rights in property are basic civil rights").

Moreover, the individual right in property is not one of mere ownership. Instead, this Court has noted that the right to property includes the right to use that property to the *exclusion* of others. *Cedar Point Nursery*, 594 U.S. at 149. *Nollan v. California Coastal Comm'n*, 483 U.S. 825, 833 n.2 (1987); *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1027 (1992). The right to exclude others is key. *Dolan*, 512 U.S. at 384; *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 433 (1982); *Kaiser Aetna v. United States*, 444 U.S. 164, 176 (1979). This Court did not invent the idea of the ownership and use of private property as a fundamental right. The individual rights in private property are a cornerstone of the liberties enshrined in the Constitution. *See Cedar Point Nursery*, 594 U.S. at 148 ("The Founders recognized

that the protection of private property is indispensable to the promotion of individual freedom. As John Adams tersely put it, '[p]roperty must be secured, or liberty cannot exist.'")

Although there was little mention of a fear of federal confiscation of property during the ratification debates, James Madison included the Takings Clause in the proposed Bill of Rights based on the protections included in the Northwest Ordinance. *See* THE BILL OF RIGHTS, ORIGINAL MEANING AND CURRENT UNDERSTANDING, (Eugene W. Hickcok, Jr., ed.) (Univ. Press of Virginia 1991) at 233. The Northwest Ordinance of 1787 included the first federal analog of the Bill of Rights and it expressly protected property from government confiscation. Robert Rutland, THE BIRTH OF THE BILL OF RIGHTS (Northeastern Univ. Press 1991) at 102. The drafters of the individual rights provisions of the Northwest Ordinance took their cue from the 1780 Massachusetts Constitution. *Id*. at 104.

While Madison may have used the language of the Massachusetts Constitution in crafting protections for individual rights in property, those protections, were firmly grounded in the Founders' theory of individual liberty and government's obligation to protect that liberty. This is the theory of government that animates our Constitution.

One of the core principles of the American Founding is that individual rights are not granted by majorities or governments but are God-given and inalienable. Declaration of Independence ¶2, 1 Stat. 1. The Fifth Amendment seeks to capture a part of this

principle in its announcement that "private property [shall not] be taken for public use, without just compensation." U.S. Const. Amend. V.

The importance of individual rights in property predated the Declaration of Independence and the American Constitution. Blackstone noted that property is an "absolute right, inherent in every Englishman … which consists of the free use, enjoyment, and disposal of all his acquisitions, without any control or diminution, save only by the laws of the land." William Blackstone, 1 COMMENTARIES ON THE LAWS OF ENGLAND Bk. 1, Ch. 1 at 135 (Univ. of Chicago Press 1979) (1765). From the pronouncement that "a man's house is his castle" (Sir Edward Coke, THIRD INSTITUTE OF THE LAWS OF ENGLAND at 162 (William S. Hein Co. 1986) (1644)) to William Pitts' argument that the "poorest man" in the meanest hovel can deny entry to the King (*Miller v. United States*, 357 U.S. 301, 307 (1958)), the common law recognized the individual right in the ownership and use of private property. Blackstone captures the essence of this right when he notes that the right of property is the "sole and despotic dominion … over external things of the world, in total exclusion of the right of any other person in the universe." Blackstone, COMMENTARIES, *supra*, Bk. 2, Ch. 1 at 2. The individual rights in private property are part of the common law heritage that our Founders brought with them to America.

Alexander Hamilton argued that the central role of property rights is the protection of all our liberties. If property rights are eliminated, he argued,

the people are stripped of their "security of liberty. Nothing is then safe—all our favorite notions of national and constitutional rights vanish." Alexander Hamilton, *The Defense of the Funding System*, in 19 THE PAPERS OF ALEXANDER HAMILTON 47 (Harold C. Syrett ed., 1973). This idea was also endorsed by John Adams: "Property must be secured, or liberty cannot exist." John Adams, *Discourses on Davila*, in 6 THE WORKS OF JOHN ADAMS 280 (Charles Francis Adams ed., 1851). Our nation's Founders believed that all which liberty encompassed was described and protected by their property rights. Noah Webster explained in 1787: "Let the people have property and they will have power that will forever be exerted to prevent the restriction of the press, the abolition of trial by jury, or the abridgment of many other privileges." Noah Webster, *An Examination into the Leading Principles of the Federal Constitution* (Oct. 10, 1787), *reprinted in* 1 THE FOUNDERS' CONSTITUTION (Philip B. Kurland and Ralph Lerner, eds., Univ. Chicago Press 1987) 597.

II. The Court Should Grant Review to Clarify that the Decision in *Yee* Does Not Countenance Confiscation of Rental Property.

The lower court ruled that allowing former renters to remain in possession of the landlord's property rent-free was a mere adjustment of the economic relationship between landlord and tenant. Pet. App. at 3a. But a requirement that an owner give away their property, regardless of whether the gift is to a former customer or a stranger," cannot be considered a mere "adjustment" of an economic relationship. As

this Court in *Yee* noted, "The government effects a physical taking only where it requires the landowner to submit to the physical occupation of his land. 'This element of required acquiescence is at the heart of the concept of occupation.'" *Yee*, 503 U.S. at 527. That is exactly what happened here. The City ordinance required the property owners to acquiesce to the presence of nonpaying squatters on their property. *Yee* did not change the long-standing understanding that compensation is required where "the government authorizes a compelled physical invasion of property." *Id*.

"The right to exclude is 'one of the most treasured' rights of property ownership." *Cedar Point Nursery*, 594 U.S. at 149; *Kaiser Aetna*, 444 U.S. at 176 (The right to exclude is "one of the most essential sticks in the bundle of rights that are commonly characterized as property."). The *Kaiser* Court held "that the 'right to exclude'" is so fundamental that the Government may not take that right "without compensation." *Id.* at 179; *Dolan*, 512 U.S. at, 384.

The Ninth Circuit's characterization of this proclamation as a mere adjustment of economic relationships does not fall within the Court's ruling in *Yee*. It is, instead, closer to the argument that this Court rejected in *Nollan*, *supra*. There, this Court declined to classify a condition on a building permit requiring the owner to allow public access to his private beach as a mere restriction on use. Such a "restriction" usurps the right to exclude others. *Nollan*, 483 U.S. at 831. The Fifth Amendment prohibits such an action without the payment of just compensation.

This is quite different from the situation at issue in *PruneYard Shopping Center v. Robbins*, 447 U.S. 74 (1980). In *PruneYard*, the shopping center sought to bar individuals from distributing brochures and soliciting signatures for petitions in the area of the shopping mall open to the public. *Id.* at 78. The shopping center had invited the general public onto the property – more than 25,000 people visited the center each day. *Id.* The Court did not consider the question of whether the commercial tenants of the mall – the stores – could retain their space without paying rent. It is one thing to require that the public areas of the mall be open to all and quite another to say that any store can usurp space in that mall without paying rent to the owner.

In this case, the renters initially occupied their apartments under an agreement to pay rent to the landowner. The City ordinance canceled the obligation to pay rent and forced the landowners to allow the renters to become squatters on the owners' property. The tenant, when he stops paying rent, becomes a "third party" and the ordinance thus compels the property owner to submit to the occupation of his property by a third party. *Yee*, 503 U.S. at 527. This is a physical invasion.

The purpose of the Takings Clause is "to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40, 49 (1960). If the State of Washington believed that a public purpose could be accomplished through allowing individuals to remain on the

landlords' property rent free, that was a public burden that should be borne by the public as a whole through the payment of just compensation. The Los Angeles ordinance transferred a public burden to private property owners. This Court should grant review to clarify that its decision in *Yee* does not compel such a result.

CONCLUSION

The Court should grant review in this case because the right to exclude others is a core aspect of the individual's rights in property protected by the Constitution. The decision in *Yee* did not remove this protection from property owners who rent to others. A law that compels property owners to suffer the occupation of their property by squatters is not a mere adjustment of economic relationships. It is a taking for which compensation must be paid.

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