

IN THE UNITED STATES COURT OF APPEALS
FOR THE SECOND CIRCUIT

1
2
3 COMMUNITY HOUSING) February 16, 2022
IMPROVEMENT PROGRAM)
4)
Appellant,) Consolidated Case
5) Nos. 20-3366
v.) and
6) 21-476
CITY OF NEW YORK)
7)
Appellee)
8
9 SEVENTY-FOUR PINEHURST,,)
Appellant,)
10)
v.)
11)
STATE OF NEW YORK)
12)
Appellee)
13)

14 ORAL ARGUMENT (ZOOM)

15 FEBRUARY 16, 2022

16
17 BEFORE APPELLATE PANEL:

18
19 APPEARANCES

20 Veritext National Court Reporting Company
21 1801 Market Street
22 Suite 1800
23 Philadelphia PA 19103
24 (888)777-6690
25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

APPEARANCES:

For the Appellant
Community Housing

(20-3366):

Mr. Pincus

For the Appellee

Seventy-Four Pinehurst:

Mr. King

For the State Appellees:

For the City Appellees:

For the Intervenor Appellees:

1 P R O C E E D I N G S

2 THE COURT: All right. The next set
3 of cases on our calendar this morning are two cases,
4 to be heard in consolidated fashion; Nos. 20-3366,
5 Community Housing Improvement versus City of New York;
6 and No. 21-476, Seventy-First -- Seventy-Four
7 Pinehurst versus State of New York.

8 I gather that counsel have worked out a
9 plan, which we appreciate, for an orderly presentation
10 and that Mr. Pincus will go first for Community
11 Housing in No. 20-3366.

12 And then we'll hear from Mr. King in
13 Seventy-Four Pinehurst.

14 We'll then hear from the State
15 Appellees and then the City Appellees, the Intervenor
16 Appellees and then rebuttal from Mr. Pincus and Mr.
17 King.

18 Does that sound right everyone?

19 UNIDENTIFIED SPEAKER: Yes.

20 THE COURT: All right. Very good.

21 Then, Mr. Pincus.

22 MR. PINCUS: Thank you, Your Honor.

23 And may it please the Court.

24 The complaint here plausibly alleges
25 that the rent stabilization law violates the Federal

1 Constitution in multiple ways and I'd like to begin
2 with the physical taking claim.

3 When the tenants lease expires and the
4 property owner wants to stop renting the property to
5 residential tenants, but the tenant wishes to renew,
6 the RSL virtually always forces the owner to grant a
7 renewal.

8 That compelled occupation over the
9 owner's objection deprives the owner of her right to
10 exclude and, therefore, constitutes a physical taking.

11 That the RSL has some limited
12 exceptions to its renewal obligation doesn't matter.
13 There is a physical taking if, at the end of the
14 lease, an owner, who wishes to stop renting her
15 property to residential tenants, is prevented by the
16 RSL from exercising her right to exclude them.

17 And that follows directly from Cedar
18 Point in which the Supreme Court held that government
19 interference with the right to exclude constitutes a
20 physical taking.

21 And the Court in Cedar Point said there
22 was a physical taking because, and I quote, "the
23 regulation appropriates for the enjoyment of third
24 parties the owner's right to exclude.

25 And that's exactly what the RSL does

1 here, it appropriates for tenants.

2 THE COURT: What happens -- what
3 happens when the rental ends with the renewal? What
4 is it that you say that they must do now that they
5 couldn't -- that they -- that is different in 2019
6 from what was before that amounts to an incapacity on
7 the part of the -- the landlord to do anything else
8 with the property?

9 MR. PINCUS: Your Honor, we're not
10 challenging -- our challenge doesn't focus exclusively
11 on the changes brought by the 2019 law.

12 We think the 2019 law, combined with
13 prior -- with the -- the law that existed beforehand,
14 the current law today, which includes both of those
15 things, it's a physical taking.

16 THE COURT: Yeah. (Indiscernible) my
17 first question about whether you are complaining about
18 the changes or whether you are complaining about the
19 whole thing. But again (indiscernible) saying why was
20 what was before constitutional and what is done now
21 not constitutional?

22 MR. PINCUS: Yes. And our position is
23 what was before, certainly with respect to the
24 physical taking part of our claims, was not
25 constitutional and that Cedar Point demonstrates that

1 because the Court, in Cedar Point --

2 THE COURT: But -- but the previous
3 rental control things were always affirmed by courts.
4 They were never, never struck down.

5 MR. PINCUS: Well, they were --

6 THE COURT: (Indiscernible) --

7 MR. PINCUS: They were referring --

8 THE COURT: I'm not saying that rent
9 control is a good thing. I'm not saying that the
10 Supreme Court might not, having changed its views,
11 decide that all sorts of things that were
12 constitutional seeming before are not.

13 I'm saying I'm a Court of Appeals and
14 I'm bound by what I read the Supreme Court to have
15 done in the past and the fact that they may be going
16 someplace else and that I may agree with that, doesn't
17 allow me to go there.

18 Justice Scalia has made that very clear
19 that I got to wait for them.

20 MR. PINCUS: I guess two responses to
21 that.

22 First of all, of course, this Court is
23 bound by Cedar Point and those prior decisions of this
24 Court that you refer to, Harmon, for example, were
25 pre-Cedar Point and applied a view of physical takings

1 that a permanent occupation was required that the
2 Supreme Court squarely rejected in Cedar Point.

3 So I think this Court has to look at
4 the law based on Cedar Point and, also, I would point
5 the Court to the Supreme Court's decision in Yee (ph)
6 which we think confirms that a physical taking occurs
7 here in --

8 THE COURT: Mr. Pincus. Mr. Pincus, I
9 mean, Cedar Point was an interesting development but,
10 you know, it occurred in a very different situation
11 where we have farmers had agricultural workers with
12 whom they had an employment relationship and that
13 regulation required the owners to allow third parties,
14 labor organizers, to come on the property for an
15 extended period of time, during the course of the
16 year.

17 Here, in a rental control situation, we
18 have a -- owners of property who are in the business
19 of having tenants. Those third parties on their
20 properties; that's -- that's their business model.

21 And they have an established
22 relationship with those people.

23 This is not -- this doesn't require
24 them to have third parties with whom they have no
25 relationship at all, government regulators, or, you

1 know, labor organizers what have you, strangers, come
2 -- to come on their property.

3 And they -- they're -- I see the taking
4 as quite different in this circumstance and actually
5 as Cedar Point not really controlling at all.

6 This is a sui generis kind of
7 relationship that has long been subject to challenge
8 and has long been upheld, both in the physical takings
9 challenges and regulatory challenges.

10 Why does Cedar Point erase all of that?

11 MR. PINCUS: Well, I think Cedar Point
12 actually -- the intrusion on the right to exclude
13 there was much more limited. Three hours a day for a
14 hundred and twenty days a year.

15 THE COURT: But it was --

16 MR. PINCUS: But I think the
17 critical --

18 THE COURT: -- (indiscernible) third
19 parties --

20 THE COURT: Cedar Point -- Cedar Point
21 says something very important about timing.

22 It says with timing is maybe different
23 from what people thought. There's no doubt that Cedar
24 Point does that.

25 But how does Cedar Point, in any way,

1 change the notion that somebody who was your tenant,
2 whom you had a relation with and would -- could be
3 able to stay beyond a certain amount of time as
4 against outsiders?

5 There are any number of cases, not
6 going as far because of the timing issue as Cedar
7 Point, which say you cannot force somebody to have a
8 third party outsider come in.

9 But why do rules change, what may be
10 quite wrong, but the traditional notion of what all
11 these cases said about rental cases?

12 MR. PINCUS: Because I think the
13 critical different here is -- is our physical taking
14 claim relates to property owners who want to stop
15 being in the residential rental business at the end of
16 the lease.

17 And that's why Cedar Point is relevant
18 but it's also relevant why the Supreme Court's
19 decision in Yee is relevant.

20 And, if I may, that was a case
21 involving --

22 THE COURT: Well, do these
23 (indiscernible) --

24 MR PINCUS: -- rent regulation.

25 THE COURT: Do these people have to

1 rent; that is, they can leave it vacant; can't they?

2 MR. PINCUS: No. That is the critical
3 point here.

4 THE COURT: No, no.

5 MR. PINCUS: If --

6 THE COURT: I mean, they -- they -- I
7 know they may not be able to change the nature of the
8 rental but do they have to rent?

9 MR. PINCUS: Well, first of all, they
10 do have to renew the lease except in very, very narrow
11 circumstances.

12 THE COURT: Well --

13 MR. PINCUS: They (indiscernible) --

14 THE COURT: -- do they have to continue
15 to --

16 MR. PINCUS: I'm sorry, Your Honor.

17 THE COURT: No. And previously to
18 this, there were other circumstances. I mean, what
19 has happened in rental is really quite remarkable
20 because at sometimes the restrictions were very, very
21 great in the 1970s and then, in between, they became
22 much looser and now they've gone back to being very,
23 very grave.

24 But how does that change the fact that
25 there were always restrictions and there are always

1 some things that attempt -- that the landlord can do.
2 Not much. But something.

3 MR. PINCUS: Well, if I can just
4 discuss the Supreme Court's decision in Yee because I
5 think it really supplies a critical additional point
6 here.

7 That was a case involving rental of
8 mobile home pads. It was a -- there was a physical
9 takings challenge to that.

10 The Court, in rejecting the claim,
11 said, and I quote, "at least on the face of the
12 regulatory scheme, neither the city nor the state
13 compels the property owner once they have rented their
14 property to tenants to continue to do so."

15 And the Court said, on its fact, the
16 law allowed the property owner, who wanted to stop
17 being in the -- in the rental business, to get the
18 property back in six or twelve months and therefore
19 the Court said, no government has required a physical
20 invasion.

21 But the Court specifically said a
22 different case would be presented where the statute,
23 on its face, where it's applied, to compel a land
24 owner, over his objection, to rent his property or to
25 refrain in perpetuity from terminating hence.

1 That's exactly what --

2 THE COURT: Let me ask you this. Let
3 me --

4 MR. PINCUS: -- the RSL does.

5 THE COURT: What relief are you seeking
6 here? What are -- what do you want us to -- to -- if
7 you win, what -- what do you want us to say?

8 MR. PINCUS: On the --

9 THE COURT: That this --

10 MR. PINCUS: On the physical taking
11 claim, which we're talking about now, we're seeking a
12 declaration that the obligation that -- that when a
13 property owner wishes to remove the property from the
14 residential rental market, for demolishing, for
15 renovation, for use for other purposes, that the
16 obligation that he offer a renewal is unconstitutional
17 and --

18 THE COURT: Mr. Pincus.

19 MR. PINCUS: -- (indiscernible) --

20 THE COURT: Mr. Pincus.

21 THE COURT: Yeah. So --

22 THE COURT: (Indiscernible) --

23 THE COURT: -- is what you're asking us
24 to do to declare this regime on a takings basis
25 unconstitutional?

1 MR. PINCUS: Yes. We're asking --
2 again, we're talking about the physical taking claim.
3 We're asking for a declaration, the precise relief
4 that the Plaintiff in Cedar Point asked for and that
5 the Court said was proper and that even Justice
6 Bryers' dissent said was proper.

7 THE COURT: And I -- and I take it --

8 THE COURT: I'm going to keep you all
9 on (indiscernible) for time.

10 THE COURT: -- this (indiscernible)
11 required applied to the million or so, whatever the
12 number is, rent stabilized apartments across the city?

13 MR. PINCUS: This would apply to the
14 rent stabilized apartments that are regulated; not the
15 ones that took on rent stabilization obligations as a
16 result of getting tax abatements or whatever.

17 It applies to those that are regulated
18 without the owner agreeing to the regulation.

19 THE COURT: And can you -- can you give
20 us an indication about how many such apartments there
21 are in the city?

22 MR. PINCUS: That's about 85 percent of
23 the approximately 966,000 apartments.

24 But every landlord is not going to want
25 to remove the property for rental.

1 What we're saying it -- from rental.
2 What we're saying is, to the extent a property owner
3 wishes to do so, the RSL is unconstitutional to the
4 extent it prevents --

5 THE COURT: Mr. -- Mr. Pincus. Mr.
6 Pincus.

7 MR. PINCUS: -- (indiscernible) --

8 THE COURT: Mr. Pincus so -- and we're
9 going to keep you past your time and be a little
10 relaxed about the time.

11 You've made a facial challenge to the
12 whole --

13 MR. PINCUS: Yes.

14 THE COURT: -- regime. You've asked
15 for declarative injunctive relief against enforcing
16 the whole rent stabilization law, as I understand it.

17 And, yet, you're saying that virtually
18 always there's no off ramp and you're focusing your
19 argument right now on someone who wants to no longer
20 be in the business.

21 But that is a very narrow subset of the
22 other applications to people who do want to stay in
23 the business, who complain about other aspects of how
24 the rent stabilization law works.

25 I don't understand how this is

1 consistent. I mean, are you saying that Cedar Point
2 compels the conclusion that this rent stabilization
3 law works a physical taking and therefore the whole
4 rent stabilization law, you plausibly alleged that --
5 that it's facially unconstitutional.

6 How are those positions consistent?

7 MR. PINCUS: Because the relief we're
8 seeking is different on different claim.

9 We have a physical taking claim and we
10 have a regulatory taking claim.

11 We're talking now about the physical
12 taking claim.

13 THE COURT: Well, let's say you win on
14 everything.

15 MR. PINCUS: (Indiscernible) --

16 THE COURT: Let's assume you win on
17 everything.

18 MR. PINCUS: If we win on everything --

19 THE COURT: Well, what do you want the
20 decretal paragraph of our opinion to say?

21 MR. PINCUS: If we win on everything,
22 then --

23 THE COURT: Yeah.

24 MR. PINCUS: -- our -- the relief we
25 are seeking is a declaration that the RSL is

1 unconstitutional and --

2 THE COURT: (Indiscernible) --

3 MR. PINCUS: -- to the extent
4 limitations apply and presumably then the legislature,
5 as we say in our complaint, the legislature will go
6 back and enact provisions that comply with the
7 constitution.

8 THE COURT: Is there any difference
9 with respect to what you're saying depending on what
10 is required for a facial taking in this or does it --
11 or essentially your argument is the same whether it's
12 a First Amendment facial claim or this that, you know,
13 there are various languages with a renewal with
14 respect to what constitutes a facial claim.

15 But you're saying it doesn't really
16 matter. It meets any one of them?

17 MR. PINCUS: Yeah. Yes. And just to
18 elaborate on that because Judge Carney asked about the
19 facial nature of our claim.

20 The Supreme Court in the Patell (ph)
21 said, the question on a facial claim is whether it is
22 the challenge lays unconstitutional with respect to
23 the group for whom the law is a restriction.

24 It's irrelevant -- the group for whom
25 the law is irrelevant doesn't matter.

1 So that was a facial challenge to a
2 Fourth Amendment -- to a fourth facial -- Fourth
3 Amendment challenge to a statute authorizing
4 warrantless searches.

5 And the City of Los Angeles said, no
6 facial challenge permissible because in some
7 circumstances a search wouldn't be unconstitutional
8 because the property owner would consent or there
9 might be exigent circumstances.

10 And Justice Sotomayor, writing for the
11 Court, said, no. You focus on the situations where
12 the law actually authorizes or prohibits conduct,
13 which is why our claim here, again, focusing on the
14 physical taking claim, is that if the relevant
15 category who the -- the property owner who is
16 restricted are the property owners who wish to not
17 renew a lease because they wish to devote the property
18 to other usage --

19 THE COURT: Now, let's -- let's --

20 THE COURT: (Indiscernible).

21 MR. PINCUS: -- (indiscernible) --

22 THE COURT Go back. What can an owner
23 do who does not wish to renew a lease?

24 Must the lease be renewed in every
25 circumstance?

1 MR. PINCUS: The lease must be renewed
2 unless the incumbent tenant has engaged in lease
3 violations or illegal conduct.

4 There is an exception where if the
5 property owner does not have any occupied for his own
6 use any property within the building, he may,
7 possibly, regain one unit, only by throwing --

8 THE COURT: Yeah.

9 MR. PINCUS: -- (indiscernible) --

10 THE COURT: Are we --

11 MR. PINCUS: -- necessity.

12 THE COURT: So you're talking about
13 this with respect to individual units or the whole
14 building?

15 MR. PINCUS: Well, we're -- the
16 physical taking claim, both claims, we're talking
17 about with respect to individual units because that it
18 what the government is regulating.

19 That is what the government is
20 requiring the owner to give up her rent with
21 (indiscernible) --

22 THE COURT: Oh. (Indiscernible) from
23 rules which existed before but loosening up between
24 1970 and today?

25 MR. PINCUS: Well, before, I mean, the

1 background rule, property law rule, is when an owner
2 -- when the lease is up, the owner --

3 THE COURT: (Indiscernible) --

4 MR. PINCUS: -- may recapture the
5 property.

6 THE COURT: -- (indiscernible) --

7 MR. PINCUS: That was the background
8 rule.

9 THE COURT: If there rent stabilization
10 rules that controlled what you did on renewal and what
11 you couldn't do after renewal, law -- I mean, they go
12 back forever. It's one of the absurdities of rental
13 control; that they're put in in time of crisis and
14 then they continue and continue and continue.

15 But what was there that then was
16 released or made easier and now has gone back that is
17 so different from what is now?

18 MR. PINCUS: Well, Your Honor, we --
19 again, our claim is not distinguishing. We're not
20 saying that the 2019 amendments made a difference with
21 respect to the physical taking claim.

22 THE COURT: But, essentially, what you
23 are saying is that this is not that different from
24 what used to be and was upheld. But we should view it
25 differently because of what the Supreme Court did in a

1 very narrow context dealing with farm workers last
2 May?

3 MR. PINCUS: Well --

4 THE COURT: That's essentially what
5 you're doing --

6 MR. PINCUS: I guess I would say two
7 things in response to that if I may.

8 First of all, I don't believe it was a
9 narrow context. I think it was a fundamental change.

10 THE COURT: Okay.

11 MR. PINCUS: Most of the --

12 THE COURT: (Indiscernible) -- maybe --

13 MR. PINCUS: Most of this Court --
14 most --

15 THE COURT: It may be that the Supreme
16 Court is going elsewhere. But we were told
17 specifically by Justice Scalia, and this has been re-
18 emphasized, that just because the Supreme Court is
19 moving in a different direction, we don't go there.
20 It's up to them to do it.

21 MR. PINCUS: I think --

22 THE COURT: We stay with things as they
23 were.

24 MR. PINCUS: I --

25 THE COURT: I may well agree with what

1 the Supreme Court was doing last year. I may well
2 think they're going there. But that doesn't give me
3 the right to ignore what was the law before --

4 MR. PINCUS: I think --

5 THE COURT: -- unless it's directly on
6 point.

7 MR. PINCUS: I think Your Honor would
8 be correct if there were Supreme Court precedent that
9 compelled the conclusion that the law is valid.

10 But this is the opposite.

11 As I said, the Yee case, which predated
12 Cedar Point, which is not really discussed in this
13 Court's prior physical takings decisions, specifically
14 distinguished in rejecting a physical taking claim,
15 the very situation we're relying on here and said,
16 we're not saying that our holding of no physical
17 taking applies in that context.

18 And the Court pretty clearly indicated
19 that there would be a physical taking in that context.

20 So, unlike the situation --

21 THE COURT: Well --

22 MR. PINCUS: -- that Justice Scalia --

23 THE COURT: -- (indiscernible) my
24 problem -- I guess my problem is this. Is do I try to
25 find a way, as you, as a good lawyer are trying to

1 find a way, to say that maybe there is something
2 before that we can squeeze in so that we can see where
3 the Supreme Court is going and going there or is my
4 job, as a Judge, in all honesty, to look at what the
5 law really looked like before and say is there
6 anything that has been changed in that, in the Supreme
7 Court, or do I follow what was before and let the
8 Supreme Court make additional changes?

9 It really has to do with whether my job
10 is to find a way around to do something that I may
11 want to do or whether my job is to say, look, in all
12 honesty. We all know what that law was. We all know
13 what that law was.

14 And that, if we want to change it, and
15 properly change it for a better, it's up to them to do
16 it.

17 That's really my -- you know, I'm being
18 very blunt about that.

19 MR. PINCUS: I understand, Your Honor.
20 But I think the critical -- I think the Court is
21 certain obligated to take account of what the Supreme
22 Court held in Cedar Point and look at its prior
23 decisions with reference to that.

24 And, if the Court does that, I think it
25 will see that its prior decisions rested on the notion

1 that to have a physical taking, you required a
2 permanent occupation.

3 That's what the dissenters said in
4 Cedar Point. That is what the Supreme Court squarely
5 rejected.

6 And, so, I think the basis for the
7 Court's prior decisions, which were basically that and
8 the notion that because an owner bought after the
9 regulation, there was some prohibition on raising or
10 limitation on raising if it's a takings claim, which
11 the Court squarely rejected in another recent
12 decision, *Horne*, with respect to property and physical
13 takings.

14 I think the Court is obligated to look
15 at its prior decisions and, if those decisions rest on
16 a principle that the Supreme Court has squarely
17 rejected, which I think the Court will see that it
18 does, that they do, then I think the Court has an
19 obligation to go back and look at the law as to your
20 point --

21 THE COURT: (Indiscernible) --

22 MR. PINCUS: -- changed it.

23 THE COURT: All right. Thank you very
24 much, Mr. Pincus.

25 MR. PINCUS: Thank you.

1 THE COURT: We will hear now from Mr.
2 King.

3 MR. KING: Good morning, Your Honors.

4 THE COURT: Mr. King, I will be
5 flexible with you as well about timing.

6 MR. KING: I appreciate that, Your
7 Honor.

8 Your Honors, Kevin King for the
9 Seventy-Four Pinehurst Appellants.

10 The physical takings claims are the
11 heart of our case as well. So that's where I'd like
12 to begin.

13 We certainly agree with Mr. Pincus that
14 Cedar Point and Yee govern those claims and Judge
15 Calabresi, you don't need to go anywhere new or
16 different outside of those two cases to rule in our
17 favor.

18 All you've got to do is just apply what
19 the Supreme Court said in those two cases.

20 What we have alleged here, Your Honors,
21 is that the RSL, as amended in 2019, vitiates owners'
22 right to exclude and transfers that right to tenants.

23 Our case is, however, a little
24 different than the one you just heard in the sense
25 that our challenge is to the entire RSL, but only as

1 it was amended in 2019 and not as it existed prior to
2 that date. In addition --

3 THE COURT: And you're making both --
4 excuse me. You're making both a facial challenge as
5 well as, in certain circumstances, an as applied
6 challenge, right?

7 MR. KING: Yes, that's correct, Your
8 Honor, and that is another difference between our case
9 and the one you just heard.

10 THE COURT: To what standard do you
11 believe needs to be met in order for you to establish
12 a -- a facially unconstitutional statute?

13 MR. KING: Your Honor, we agree with
14 everything Mr. Pincus said about that. You know, the
15 Supreme Court said it in Citizens United that a facial
16 challenge is not really a pleading standard. It just
17 goes to the relief that would be provided.

18 But, in any event, we've argued that
19 the plainly legitimate sweep case, the plainly
20 legitimate sweep test is the one that would apply
21 here.

22 THE COURT: Isn't it a little hard to
23 say that a regime that's been in place for over 50
24 years has a plainly legitimate sweep?

25 MR. KING: No, Your Honor, because this

1 regime has not been in place for over 50 years. It's
2 been in place for not even two years.

3 Again, we challenge --

4 THE COURT: Okay. But the basic -- the
5 basic elements of it, you know, whether they are
6 offering up for property owners to get out of the
7 business of renting or to occupy their own, you know,
8 premises, or who successors are, well, all of those,
9 the -- the basic elements of that have been in place
10 for a very long time.

11 There have been some additions and
12 tweaks since 2019. But, still, you know, you have to
13 show that it's unconstitutional in all of its
14 applications. It doesn't have a plainly legitimate
15 sweep and, yes, there have been some modifications in
16 how exactly that is expressed.

17 But that's a tall order and we've
18 expressed a strong lack of enthusiasm for facial
19 invalidity claims; haven't we, as in Copeland, for
20 example.

21 MR. KING: Well, Your Honor, I --
22 really our foundation here is what the Supreme Court
23 said last summer in Bonto (ph) which, of course, is
24 controlling precedent here.

25 And what they said in that case is that

1 the normal test is either Solerno (ph), which is no
2 set of circumstances or, as here, no plainly
3 legitimate sweep.

4 And, I guess, the more important point,
5 from our perspective, Your Honor, is that what
6 happened in the 2019 amendments is not just a
7 continuation or a minor tweak to what was
8 (indiscernible).

9 THE COURT: Well, what --

10 MR. KING: It was --

11 THE COURT: -- is it that happened in
12 2019 -- see; you're answering my question to Mr.
13 Pincus, which was are you claiming that what happened
14 in 2019 was a taking?

15 So what happened in 2019, what changes
16 were made that constitute, on their face, either a
17 physical or a regulatory taking?

18 What is it that happened then, that
19 change, from what the law was before, and I don't mean
20 immediately before, but sometime before, and what
21 happened then that constituted a taking?

22 MR. KING: Certainly, Your Honor.

23 The thing that changed is that owners
24 no longer have the right to exercise -- no longer have
25 the ability to exercise their right to exclude.

1 At all times before the 2019 --

2 THE COURT: But why do -- why do you
3 say that?

4 They don't need -- I mean, you know,
5 they can tear the building down. They can fail the
6 (indiscernible) --

7 MR. KING: So --

8 THE COURT: I mean, these are
9 expensive. They're not nice but how is it that they
10 can -- why is that a lack of exclusion in a different
11 way when you're dealing with third parties, of course,
12 as in last year's case?

13 MR. KING: It -- Your Honor, all the
14 way up until 2019, owners always had the ability to
15 reclaim units for their own or their family's use as a
16 residence.

17 They had de-control provisions.
18 They --

19 THE COURT: Now -- now they can do it
20 with respect to one apartment but not with respect to
21 all and how does that constitute -- I mean, you know,
22 the fact that you're only limited to getting in for
23 your own use is a great limitation.

24 But the difference between losing one
25 apartment or more is not that great a difference; is

1 it?

2 MR. KING: Well, as to all of the
3 apartments, other than the one, those are
4 categorically ineligible for owner recovery. So there
5 is no way to get them back. There is no way, with
6 respect to those apartments, to exercise the right to
7 exclude.

8 And, as Mr. Pincus said, the RSL
9 compels these lease renewals.

10 And so it doesn't regulate. After
11 2019, it doesn't regulate the landlord/tenant
12 relationship. What it does is it mandates the
13 existence of such a relationship where it otherwise
14 would not exist.

15 And -- and I guess I want to emphasize
16 that our Plaintiffs, here, have alleged, on an as
17 applied basis, that these off ramps, Judge Calabresi,
18 that you're referring to, do not apply in their
19 circumstances.

20 And, as a result, we fall --

21 THE COURT: But they -- they have not
22 sought hardship exemptions or tried to get -- find an
23 off ramp; have they?

24 MR. KING: Your Honor, the --

25 THE COURT: In the hope --

1 MR. KING: -- hardship --

2 THE COURT: -- to right this problem?

3 MR. KING: Your Honor, there are no
4 hardships -- exemptions for a physical taking. There
5 are -- there is no mechanism in the statute,
6 whatsoever, that could restore, for example, the
7 owners' ability to reclaim a second, a third or a
8 fifth apartment for owner use.

9 There is likewise no other mechanism in
10 the statute to deal with the other elements of
11 physical occupations that we're talking about.

12 Those hardship exemptions instead apply
13 only to the amount of money that can be charged each
14 month for rent and, therefore, are, in our view,
15 irrelevant to the physical takings analysis.

16 THE COURT: Or if -- if you prevail on
17 a facial claim, what then becomes the legal status of
18 these million leases in place throughout the city?

19 MR. KING: Your Honor, those million
20 leases would remain and it would be up to the owners
21 and the tenants to negotiate a renewal if that's what
22 they wanted to do.

23 The owners simply wouldn't be compelled
24 to renew the leases the way they are right now.

25 I also want to get, Judge Carney, to

1 something you were asking about and the notion that
2 these owners have voluntarily opened their buildings
3 up, their apartments up, to occupation by third
4 parties.

5 That certainly means that the initial
6 occupation might be characterized as voluntary. But,
7 because of this compelled renewal provision that we're
8 talking about, those renewal terms are not voluntary,
9 at least where, as here, the owners do not wish to
10 renew --

11 THE COURT: But they're --

12 MR. KING: -- the leases.

13 THE COURT: (Indiscernible) that there
14 always were limits on non-renewals. They've changed.
15 These are much stricter than there were before but
16 there always were those and when a landlord went into
17 this in New York, knowing that there were these limits
18 on non-renewal, wasn't that exactly opening themselves
19 up to a change in these, which might be worse or might
20 not?

21 MR. KING: I -- two responses to that,
22 Your Honor.

23 First, no. It -- it's not true, just
24 as a factual matter that it was impossible in the past
25 to exercise the right to exclude.

1 On the contrary, there always, always
2 was a way for owners to regain control and use of the
3 -- of their property and that no longer is the case.
4 That's a --

5 THE COURT: But --

6 MR. KING: -- fundamental shift and you
7 don't have to take it from me --

8 THE COURT: -- what -- what was that
9 other than the limited number of apartments that you
10 could use for your personal use as against now?

11 Because, you know, realistically, how
12 many apartments could one use for one's personal use?

13 MR. KING: Well, it -- it really
14 matters.

15 I mean, take, for example, the
16 Pantagulous (ph) Plaintiffs here, they own a small
17 building in Long Island City that has six rent
18 stabilized apartments --

19 THE COURT: But that would --

20 MR. KING: -- that --

21 THE COURT: Let me just point out that
22 now we're in talking an as applied --

23 MR. KING: Yeah.

24 THE COURT: -- right? And I think
25 Judge Calabresi is trying to address, or I'm

1 interested in, this question insofar as it implies
2 still facial invalidity which was your first position.

3 MR. KING: Certainly, Your Honor.

4 So as to the facial claim, you know,
5 owners had various mechanisms.

6 For example, prior to 2019, they had
7 the de-control provisions that allowed them by
8 investing in their own apartments to go out and
9 exercise their right to exclude. They had that
10 ability.

11 And -- and, moreover, I think, you
12 know, what the Supreme Court said in the Horne case is
13 that this acquiescence theory, Judge Calabresi, that
14 seems to be embedded in your question, is no longer
15 valid.

16 The reason growers in that case --

17 THE COURT: In Horne -- in Horne they
18 took -- they required the transfer of possession of
19 actual raisins.

20 Here, we're talking about limits on how
21 -- what happens to property that is designated as
22 residential property that -- that is available to the
23 public for -- for leasing.

24 MR. KING: Well, Your Honor, two -- two
25 points there.

1 First off, again, I really want to
2 focus on the terms of the invitation.

3 The owners here invite these tenants in
4 for, under the RSL, at most a two-year lease term.

5 The Defendants overlooked that
6 limitation entirely and they seem to say that if you
7 invite someone over to watch the Super Bowl, the law
8 gives that person --

9 THE COURT: But that --

10 MR. KING: -- the right to go live in
11 the guest bedroom.

12 THE COURT: -- but that has been -- but
13 that has been true from the very beginning.

14 The charge is, what you've been pointed
15 to, is that previously this was subject to my being
16 able to take it over in any number of different
17 apartments for my personal use and now that it is
18 limited to one.

19 But that doesn't go to when there were
20 limits to what I could do before. And you're saying
21 it's a 2019 change that is unconstitutional on its
22 face; aren't you?

23 MR. KING: Yes. We're saying that the
24 law, as amended in 2019, is unconstitutional on its
25 face.

1 We agree with Mr. Pincus on that score.

2 We're not reaching --

3 THE COURT: Were the previous --

4 MR. KING: -- (indiscernible) time --

5 THE COURT: Were the previous ones
6 constitutional?

7 MR. KING: You know, we -- we have not
8 made any claim about prior iterations of the statute
9 and we haven't briefed that and, you know, I honestly
10 don't have a view on that today.

11 Mr. Pincus's case is different than our
12 in that regard.

13 But, just to come back to the point
14 about the --

15 THE COURT: But, I mean, you -- and it
16 seems to me that what you're essentially complaining
17 about is not a -- a -- so much a sea change in regime.
18 It's just a -- a change in some of the regulatory
19 features.

20 MR. KING: No, Your Honor. And you
21 don't have to take it from me.

22 The sponsors of the 2019 amendments
23 described their changes as sweeping; as the most
24 protective in history and --

25 THE COURT: Oh, but --

1 MR. KING: -- and designed to --

2 THE COURT: Yeah. Look, if we go to
3 what people say in legislature when we are passing
4 things in order to get votes, we can go, you know -- I
5 think we've been taught not to do that.

6 The question is what does it actually
7 do and it does a lot. I'm not denying that.

8 On the other hand, the difference
9 between my being able to take over one apartment for
10 my personal use and my being able to take how many?
11 Can I take 50 apartments for my personal use? I mean,
12 come on, now. That's absurd.

13 MR. KING: Your Honor, it's not just
14 about personal use. It's about the full range of
15 things that owners could do to regain control of their
16 property and to exercise their right to exclude.

17 So I don't want to get too focused on
18 owner use. That's just one example.

19 But -- but as to what the 2019
20 amendments achieved, if you don't want to look at the
21 legislative history, I certainly will understand. I
22 clerked for Justice Scalia. He didn't want to look at
23 it either.

24 But take the New York Court of Appeals
25 which is the State's highest court and its word is

1 authoritative.

2 And what they said, in the Regina
3 Metropolitan case, is that this law adopted sweeping
4 changes and represented a clear rejection of prior
5 enforcement policy.

6 Prior to 2019, the statute said it was
7 designed to foster a transition from regulation to
8 free market. That policy has been rejected. There is
9 no more free market here. These (indiscernible) --

10 THE COURT: Yeah. But --

11 MR. KING: -- apartments.

12 THE COURT: -- the most interesting
13 thing in this case is the state of the other side is
14 can you actually say landlords, you must pay for
15 something we want to do for the benefit of the poor,
16 rather than having the whole society pay for it?

17 But that which was Justice Scalia's
18 dramatic statement in dissent.

19 MR. KING: Your Honor, that --

20 THE COURT: In dissent and I may agree
21 with it but it was in dissent.

22 MR. KING: Your Honor, that was in
23 dissent on a regulatory takings claim.

24 And -- and, again, the heart of our
25 case is the physical takings claim. And, on that

1 point, the RSL, as amended in 2019, compels property
2 owners to -- to endure continued tenancies --

3 THE COURT: But, Mr. --

4 MR. KING: -- renewed tenancies --

5 THE COURT: But let me ask you a
6 question about your as applied physical takings
7 challenge.

8 Do you allege that any of the as
9 applied Plaintiffs were forced to enter the rental
10 market or presently have a desire or intention to exit
11 the rental market altogether?

12 MR. KING: We do not allege that any of
13 them were forced to enter the rental market.

14 We allege that all of them are forced
15 to renew leases over their objection and that the --

16 THE COURT: But that doesn't --

17 MR. KING: -- (indiscernible) --

18 THE COURT: But that isn't the second
19 part of my question.

20 So they weren't forced to enter it and
21 they -- you're saying they do or do not have presently
22 a desire to exit the rental market altogether?

23 MR. KING: Yes. For example, the
24 Pantagulous Plaintiffs would very much like to --

25 THE COURT: They -- they do.

1 MR. KING: -- to --

2 THE COURT: They do want to exit the
3 market, rental market, altogether?

4 MR. KING: What they want to do, the
5 Patagulous Plaintiffs, Your Honor, have alleged that
6 they would like, for example, to have Maria
7 Pantagulous move back into the building. But they
8 can't do that because of the 2019 amendments
9 restrictions.

10 THE COURT: But -- so they have the
11 intent to keep renting out. They would like to keep
12 renting out --

13 (Overlapping audio voice.)

14 THE COURT: -- (indiscernible) of the
15 -- who rents in what apartments in the building; is
16 that right?

17 MR. KING: Your Honor, there -- there's
18 not an allegation one way or the other about what they
19 intend to do in the future.

20 And I would point out that in Yee --

21 THE COURT: But -- but don't they --
22 don't -- isn't it up to them to say that they want to
23 get out of the rental market altogether and are not
24 able to do so, if you're making a facial claim?

25 That is, you're saying there's no

1 allegation, one way or the another. But if the claim
2 is that they are prevented, that there's a taking
3 because they are prevented from doing something they
4 want to do and have a constitutional right to do, then
5 don't they have to tell us that that is so?

6 MR. KING: Well, again, Your Honor, two
7 responses there.

8 In Horne, the Supreme Court did not
9 require an allegation that the owner would change the
10 use of the property. That -- that let them sell wine
11 defense was rejected there. So it should be rejected
12 here as well.

13 But, in any event, I -- I just want to
14 make clear. Appellants have alleged, on an as applied
15 basis here, that they do want to do something else
16 with their property. They want to occupy it. They
17 want to leave it vacant. They want to renovate it.
18 They want to do --

19 THE COURT: As to --

20 MR. KING: -- any number of things to
21 it.

22 THE COURT: As to Maria, they just said
23 she was considering and they, you know, there was
24 nothing special about one unit over another unit. It
25 was a very vague allegation I thought.

1 MR. KING: It --

2 THE COURT: Is that enough? Really?

3 MR. KING: The allegation at pages 51
4 to 52 of the joint appendix is that she's interested
5 in moving back into the building and that she's unable
6 to do so as a --

7 (Background audio)

8 MR. KING: -- result of the 2019
9 amendment.

10 And, moreover, they have alleged that,
11 you know, where their building is located is not zoned
12 for commercial use. So that's not an option.

13 If you look at 61 to 62, they have said
14 that there are any number of other things that they
15 would like to --

16 THE COURT: No. Wait.

17 MR. KING: -- do with these apartments.

18 THE COURT: Wait. When you're saying
19 that, aren't you getting very close to an argument
20 that -- about zoning?

21 I mean, aren't you getting very close
22 to saying that these -- that zoning is being limited?

23 And, by the way, haven't the
24 Pantagulous waived their as applied argument? Isn't
25 that one of the things that originally the District

1 Court granted them and then they said, no? So that's
2 not before us.

3 MR. KING: Absolutely not, Your Honor.
4 What they did is they voluntarily
5 dismissed their as applied regulatory --

6 THE COURT: Well then --

7 MR. KING: -- takings challenge.

8 THE COURT: -- then we can't have your
9 argument that because of that, there is an applied
10 taking here because as to them, that just doesn't -- I
11 mean, we don't have it --

12 MR. KING: No. You're -- no. No, Your
13 Honor, that's not correct.

14 They waived their as applied regulatory
15 taking challenge. They have preserved and continue to
16 press their as applied physical takings challenge.
17 That is still very much before the Court.

18 THE COURT: All right.

19 MR. KING: So --

20 THE COURT: Mr. King, thank you. Thank
21 you very much. You have preserved three minutes for
22 rebuttal, I think. Right?

23 So we'll move on and hear from the
24 State. Ms. Budakava (ph).

25 MS. MORJAKAVA: Good morning. May it

1 please the Court. Esther Morjakava (ph) for the State
2 Appellees.

3 The Appellants seek to invalidate, in
4 its entirety, a comprehensive statutory scheme that is
5 designed to provide stability in New York City's
6 volatile housing market.

7 Appellants' constitutional challenges
8 are largely foreclosed by well-settled precedent and
9 this Court should affirm the dismissal of both
10 complaints.

11 Unless the Court has specific questions
12 about the sovereign immunity arguments related to some
13 of the claims in the Pinehurst case, I'll move on to
14 the physical takings claims.

15 And all of those, both the facial
16 challenges and as applied challenges, fail really for
17 the same fundamental reason; which is that none of the
18 landlords, subject to the RSL, was conscripted into
19 the rental market.

20 Yee and this Court's subsequent
21 precedents which directly rely on Yee hold that there
22 is no physical taking when a landlord voluntarily
23 offers their housing to third party tenants because
24 the hallmark of a physical taking is a compelled
25 physical occupation or appropriation.

1 And that is --

2 THE COURT: Isn't Yee suggest --

3 THE COURT: Okay. But suppose somebody
4 -- supposed somebody enters the rental market and a
5 law then is passed that forever, with no limitations,
6 with nothing of any sort, that person has never the
7 right to get that apartment back. Would that be okay?

8 MS. MORJAKAVA: Your Honor, if there
9 were truly no exit ramps from the rental market, that
10 would --

11 THE COURT: No, no.

12 MS. MORJAKAVA: -- be a --

13 THE COURT: Yeah. But I'm -- you're
14 now making a somewhat different -- I mean, when you
15 began, you seemed to say that because somebody enters
16 into the rental market that is the end of the game;
17 that anything can be done to that person; whether by
18 way of regulation or by physical taking, because they
19 have assumed that when they went into the rental
20 market.

21 Now is that what you're saying or are
22 you saying that the changes that have occurred here
23 are not that dramatically different from what there
24 were before and, therefore, they're all right?

25 I just want to be clear on that because

1 you're opening statement was rather dramatic.

2 MS. MORJAKAVA: And I -- I'm happy to
3 clarify that, Your Honor.

4 We are not saying that a landlord who
5 enters the market has acquiesced to the physical
6 taking.

7 What we're saying is that when a
8 landlord is a voluntary participant in the rental
9 market, the regulation of the landlord/tenant
10 relationship that results from that economic
11 participation, is not a physical taking.

12 Now, there -- there is a lot of
13 discussion in the briefs about exit ramps and I do
14 want to distinguish between exit ramps from rent
15 regulation and exit ramps from the rental market
16 altogether.

17 For the physical takings claim, the
18 only relevant exit ramps are exit ramps from the
19 rental market.

20 To the extent any of the Appellants
21 wish to exit rent regulation, all they're really
22 arguing is that they wish to continue to provide their
23 units for rent but not be subject to the rental
24 controls of the RSL or other provisions that limit
25 what they can do with respect to tenants.

1 That is not -- that does not state a
2 physical taking claim.

3 With respect to the exit ramps from the
4 rental market, on the face of the law, there are a
5 number of exit ramps and a landlord can occupy as many
6 vacant units as they wish.

7 A landlord can sell the entire building
8 outright to one seller or -- one buyer of multiple
9 buyers.

10 A landlord can convert the unit -- the
11 building to condominiums or co-ops.

12 It can convert it to commercial use for
13 their own business.

14 It can reclaim one unit for personal
15 use.

16 And what Yee says is that the
17 availability of those exit ramps, on the face of the
18 statute or regulation, forecloses a facial physical
19 takings claim.

20 The same arguments that the Appellants
21 are raising here which is, you know, their arguments
22 that those exit ramps are illusory or unavailable;
23 they're supported by purely speculative allegations.

24 But they are not sufficient in any --
25 in any event.

1 What the Supreme Court made clear in
2 Yee is an owner actually has to try to run that
3 gauntlet; has to make an effort to exercise the exit
4 ramps out of the rental market.

5 And, if they're not able to do so, then
6 maybe they can bring an as applied claim. But that's
7 not the situation we have here.

8 I'd like to address the as applied --

9 THE COURT: (Indiscernible) Cedar Point
10 -- could you address the effect of Cedar Point because
11 we're -- we've been talking about dated law in some
12 respects and, from counsel's argument, it sounds as
13 though they believe Cedar Point changed everything.

14 MS. MORJAKAVA: Certainly, Your Honor.

15 We do not think that Cedar Point
16 changed the relevant law here which is Yee's holding
17 that regulations of the landlord/tenant relationship
18 are not physical takings because, what they are, is a
19 regulation of the economic relationship that is
20 created when a landlord opens their property for
21 occupation by a third party tenant.

22 And I think Cedar Point supports that
23 because Cedar Point distinguishes a Prune Yard (ph)
24 decision which held that regulations about the
25 shopping malls relationship with people who enter the

1 shopping mall are not physical takings because a
2 shopping mall opens its property to the public.

3 And, so, regulations of that
4 corresponding relationship are not physical takings
5 because what you're really regulating is a service
6 that's being offered to the public.

7 THE COURT: But still Cedar Point
8 emphasized the importance of the right to exclude and
9 attached a new sense of priority to the landowner's
10 right to exclude.

11 And, you know, the 2019 alterations to
12 the rent stabilization law in New York placed great,
13 great constrains on the landowner's right to exclude.

14 Why doesn't Cedar Point establish that
15 they have gone too far?

16 MS. MORJAKAVA: I think what Cedar
17 Point talks about is the right to exclude unwanted
18 third parties who never had the right to be there and
19 who -- who never -- who the landlord never authorized
20 to be there.

21 Here, a landlord has offered their
22 property for rent to third party tenants.

23 With respect to the renewal leases that
24 Mr. Pincus --

25 THE COURT: That comes back to my

1 question. Once you have taken a tenant, do you give
2 up any controls over right to exclude that tenant or
3 is there some point at which the constraints on
4 excluding that tenant become so great that it becomes
5 a right to exclude that is forbidden by the
6 Constitution?

7 That is, are the changes that were made
8 in 2019 of the same order we have held do not violate
9 a right to exclude or are they something that go to
10 the point where that is no longer so?

11 And is that so in a facial challenge or
12 in an as applied challenge in some of these cases?

13 MS. MORJAKAVA: Well, the specific
14 right to exclude arguments that the Appellants have
15 raised are objections to the lease renewal provisions
16 to the succession right provision and so forth.

17 And those really aren't about the right
18 to exclude. Those are about the landlord wanting to
19 offer possibly leases to somebody else.

20 None of the Plaintiffs here actually
21 allege that when they were required to give lease
22 renewals, that they wanted to exit the rental market.

23 I think that's actually a very notable
24 aspect of the Pinehurst complaint is that even the
25 landlord -- even the Plaintiffs there, that bring an

1 as applied challenge, and do not assert that they
2 actually wish to exit the rental market entirely.

3 What they are asking for is the ability
4 to give leases to other tenants and -- that pay more,
5 that pay market rents. They really want to eliminate
6 the cap on rents because, otherwise, there should be
7 no objection to giving lease renewals to a tenant that
8 is complying with the provisions of the lease.

9 And, if the objection is really that
10 they don't want to give lease renewal on a regulated
11 basis, pursuant to the regulations -- pursuant to the
12 provisions of the rent stabilization law, that does
13 not state a physical taking claim either facially or
14 as applied.

15 THE COURT: Let me -- let me throw at
16 you -- let me throw at you something much broader and
17 more fundamental.

18 If the original notion of the takings
19 clause was if you want to do something that is for a
20 benefit for a public use, that benefits any number of
21 people and we all must pay for it, not just the people
22 who happen to own the land that is being taken for a
23 park or a highway or something of that sort.

24 And isn't what is going on in the New
25 York rent control law now exactly that? That is, we

1 went to benefit the poor but we don't want to pay for
2 it. We want to make the landlord pay for it.

3 Now that is not the way these takings
4 clauses have been interpreted over the years.

5 But if that is what the fundamental
6 notion of a takings clause is, shouldn't we then read
7 what has happened in takings cases, including more
8 recent Supreme Court cases, like last year's case to
9 be -- to allow us to go further in saying these laws
10 can't be.

11 Do you see what I'm saying? That if a
12 purpose is one which we have undercut over the years,
13 shouldn't we find ways of supporting that purpose in
14 recent Supreme Court cases?

15 MS. MORJAKAVA: I think, Your Honor,
16 implicit in your question, and maybe some of your
17 questions to Appellants' counsel, is that to do so
18 would require this Court setting aside numerous prior
19 decisions of the Second Circuit and --

20 THE COURT: Well --

21 MS. MORJAKAVA: -- and disregarding --

22 THE COURT: That was my main --

23 MS. MORJAKAVA: -- disregarding --

24 THE COURT: -- question to opposing
25 counsel and they said, oh, you're a lawyer. Be

1 clever. You can read around them.

2 MS. MORJAKAVA: So, to be clear, I do
3 think that that would require setting aside many prior
4 decisions of this Court as well as disregarding the
5 Supreme Court's direct holding in Yee and I don't
6 think that is within the authority of this panel to
7 do.

8 But I will answer -- answer your
9 question on the merits as well.

10 I think there are a lot of assumptions
11 about the nature of the -- of New York rent
12 stabilization law and that questions that are not
13 necessarily correct.

14 That the law is not intended to give
15 benefits to any particular party or place burden on
16 any particular party.

17 The law is written in response to --
18 was written in response to a severe housing shortage
19 that was resulting in wildly spiking rent that was
20 then triggering all sorts of other public harms,
21 including homelessness, the displacement of tenants,
22 the displacement of important community services and
23 that is what the legislature was seeking to address.

24 It was seeking to regulate this
25 landlord/tenant relationship in order to preserve a

1 whole host -- prevent a whole host of public harms and
2 to provide benefits to both tenants and to landlords
3 in that regulation and those circumstances continue to
4 happen here today.

5 I think even landlords would be hard
6 pressed to argue that they do not benefit from the
7 rent stabilization law to the extent that it prevents
8 a homelessness crisis which would greatly deplete
9 property value across the city among other types of
10 harms.

11 If I may briefly address that as -- I
12 see that I'm over -- I'm over time.

13 THE COURT: That's okay. We're being
14 relaxed about the time and I would like you very much
15 to -- I hope you're going to address the standard of
16 review on a facial challenge. What we -- what we
17 should apply.

18 MS. MORJAKAVA: Certainly, Your Honor.
19 Our position is that you should apply
20 the Solerno rule which is that a facial -- a facial
21 challenge must -- requires a showing that the law is
22 unconstitutional in all applications.

23 Even if you -- even if you apply what
24 the -- the standard the Appellants wish you to apply,
25 which is the plainly legitimate sweep standard, we

1 would still survive scrutiny under that standard. The
2 rent stabilization law, which is challenged here
3 again, in its entirety, has a plainly legitimate
4 sweep.

5 It regulates the landlord/tenant
6 relationship in some ways that are unique to New York
7 law and in other ways that are present in
8 landlord/tenant regulations that -- that are present
9 throughout the country.

10 It is really --

11 THE COURT: And what -- what about the
12 language from Kaycee (ph) and Patel that was cited to
13 us about the relevant class? What are -- what would
14 -- should we be looking at if -- if that standard
15 applies?

16 MS. MORJAKAVA: I think the large
17 fraction standard in Kaycee is really a sui generis
18 standard that is applicable to abortion regulations
19 because of the unique nature of abortion regulations.

20 I'm not aware of any case that has
21 applied the large fraction standards specifically
22 outside the abortion context.

23 With respect to Patel, I think our
24 position is entirely consistent with what Patel said
25 which is that you look to the body of landlords that

1 would be affected by the particular regulation or
2 change.

3 THE COURT: But would you take -- would
4 you take the position that if we bought the Kaycee
5 standard, it still would be the case that is hasn't
6 been met here?

7 MS. MORJAKAVA: I would take that
8 position, Your Honor, for a number of reasons.

9 One is that the law, on its face,
10 provides a number of exit ramps from the rental market
11 and the Plaintiffs have to actually try to exercise
12 those exit ramps rather than say -- just throw up
13 their hands and say, we think they're illusory. They
14 are not available to us.

15 That is not a way to satisfy the
16 heightened standard for facial constitutional
17 challenges.

18 If I may --

19 THE COURT: Well but -- but under --
20 under your theory, I'm not clear how an affected
21 landlord has any remedy at all.

22 MS. MORJAKAVA: Well, I think it
23 depends on the nature of the landlord injury.

24 If the landlord -- if there is a
25 landlord who wishes to enter -- exit the rental market

1 altogether, again there are numerous exit paths that
2 are available to them. If that landlord tries to
3 exercise those rental -- those exit paths and they --
4 and finds that they are unavailable or denied, then
5 there is the possibility of an as applied challenge
6 that that landlord could bring.

7 THE COURT: So you're saying that --
8 that any landlord could theoretically, on an ad hoc
9 basis, challenge particular features of the new -- of
10 the new regime?

11 MS. MORJAKAVA: That's right. That's
12 right, Your Honor.

13 And that really is the way
14 constitutional challenges typically are litigated. I
15 think what is remarkable about these cases is that
16 there are challenges seeking to set aside a very
17 comprehensive statutory scheme that does a lot of
18 things by noting particular provisions that the
19 Appellants object to.

20 And we have responses to why those
21 particular provisions do not state takings violation.

22 But the remedy that both Appellants
23 have asked for, and I would urge the Court to look at
24 pages 144 to 145 of the CHIP Appendix and 121 to 122
25 of the Pinehurst Appendix, is to enjoin the

1 application of the rent stabilization law in its
2 entirety --

3 THE COURT: You're -- you're
4 understanding is that what the -- what your opponents
5 are looking for is a -- essentially the removal of the
6 rent stabilization law from -- from the books and an
7 inability of the City to apply.

8 MS. MORJAKAVA: That is exactly the
9 relief that they've asked for and if the Court looks
10 at those pages of the complaint which are the prayers
11 for relief, the relief is to remove the application of
12 this law in its entirety.

13 And that kind of remedy is completely
14 improper.

15 THE COURT: So if I'm a landlord then
16 or a tenant, and my lease is up for renewal, you know,
17 in June and this law is off the books, what happens?

18 MS. MORJAKAVA: Well, I think what Mr.
19 King indicated would happen is that the -- I think he
20 said that the landlord and the tenant would then be
21 free to negotiate the lease.

22 But I think what that really means is
23 that the landlord -- if the law was truly enjoined,
24 the landlord would be able to charge whatever rent
25 they want to charge and that -- that tenant would have

1 to take it or leave it.

2 THE COURT: Well, would they-- would
3 the landlord be in no circumstances obligated even to
4 tender a new lease?

5 MS. MORJAKAVA: No, Your Honor.

6 THE COURT: To tender a release -- a
7 renewal lease?

8 MS. MORJAKAVA: No, Your Honor. The
9 landlord would not be because, again, the remedy that
10 is being sought is an injunction against the
11 application of the whole law so that would include the
12 lease renewal provisions.

13 So, really, what would happen, and this
14 is actually testimony that the legislature heard
15 directly, during the -- during hearing about the 2019
16 amendments, is that if this law were removed from the
17 books, thousands, thousands of families in New York
18 City would be driven directly into the shelter system.

19 Now I -- I do --

20 THE COURT: (Indiscernible) argument
21 that we could decide in your favor simply on the basis
22 that the remedy sought was broader than what any
23 unconstitutionality of any part of this law might do
24 and that since the remedy sought is so broad, we deny
25 that remedy and if they wanted to try to bring

1 narrower cases, they should do so in the future; is
2 that -- would that satisfy you?

3 MS. MORJAKAVA: Certainly, Your Honor.
4 We're not arguing that there -- that there can be no
5 conceivable as applied challenge to this, to this
6 statute, or to provisions of the statute, that are
7 actually affecting harms on any given landlord.

8 THE COURT: All right. Thank you.

9 MS. MORJAKAVA: Thank you, Your Honor.

10 THE COURT: Thank you very much for
11 your argument.

12 We will hear from the City. Mr. Platin
13 (ph).

14 MR. PLATIN: Thank you, Your Honor.
15 May it please the Court.

16 Claude Platin on behalf of the City
17 Appellees.

18 Rent stabilization law has been a
19 mainstay of life in New York City for half a century,
20 protecting tenants from unreasonable rent increases,
21 enabling them to put down roots and fostering
22 neighborhood stability.

23 Today, two million city residents
24 received its protections and this Court has rightly
25 rejected past attempts to hold that the RSL effects a

1 taking or violates due process and it should reject
2 Plaintiffs' challenges here and affirm the judgment of
3 the District Court dismissing the two suits.

4 I'd like just make a couple of points
5 about the physical taking claims which have been the
6 focus of the conversation. I'd also like to address
7 the regulatory taking claims in case the Court has
8 questions about those.

9 Just on the issue about the requirement
10 issue, renewal leases, to issue releases to
11 successors.

12 I think the Court's rightly recognizing
13 its questions that the -- that there is controlling
14 law on this point and that indications in the Supreme
15 Court, which I can address or my colleague has
16 addressed about Cedar Point, don't make those
17 decisions any less binding.

18 I just want to highlight one point in
19 addition about the arguments that the Plaintiffs are
20 making about the -- the requirement to renew the lease
21 to be a physical taking.

22 And that is just to note that in
23 addressing this issue in Yee, the Supreme Court, in
24 talking about how the requirement to accept tenants
25 one doesn't like, doesn't constitute a physical

1 invasion once the landlord is in the business and is
2 accepting tenants onto its property that the removal
3 of the choice to choose the identity of the tenant
4 isn't a physical taking.

5 The Court -- I think it's significant
6 that the Court cited as one of the examples of that
7 principle, the Heart of Atlanta Motel case, which is,
8 of course, the case upholding the Civil Rights Act
9 against a taking challenge.

10 Primarily, there was a commerce clause
11 challenge but there was also a taking challenge that
12 the requirement to -- not to discriminate in the
13 provision of public accommodation was a taking.

14 And the Court rejected that out of
15 hand.

16 And in both Yee and then again in Cedar
17 Point, the Court cited Heart of Atlanta Motel as an
18 example of a use restriction that didn't constitute a
19 physical taking.

20 So I just wanted to flag the point that
21 I think the Plaintiffs have a real line drawing
22 problem if their argument, and I've heard them both
23 say this, that the requirement to renew a lease for a
24 tenant one doesn't like or the limitations on the
25 ability to choose the tenant, would --

1 THE COURT: Well --

2 MR. PLATIN: -- constitute a physical
3 taking.

4 THE COURT: Counsel. Counsel. You're
5 making a distinction that Cedar Point might be making
6 between outsiders and people who are tenants.

7 Somebody else could say that the
8 previous distinctions which were made all went to
9 tenants one didn't like, went to tenants to protect
10 anti-discrimination; all of those, and said that is
11 not (indiscernible).

12 But why is the line to be drawn between
13 third parties and people one had dealt with and not a
14 line which said there are any number of reasons why
15 making you deal with some (indiscernible) tenants is
16 not a taking but other reasons instead would be a
17 taking?

18 That is, you may not throw out tenants
19 because you don't like them but you may have a right
20 to throw out tenants if you want to use the property
21 yourself or if you want to do something else.

22 That is, where in the previous cases is
23 the line that you are drawing as against the line
24 which would say 2019 when (indiscernible) else that
25 was before.

1 MR. PLATIN: Well, a couple of things
2 to say on that, Your Honor.

3 One is this isn't a situation where the
4 law doesn't permit exclusion of a tenant who either
5 breaches the lease or -- or acts improperly in the
6 unit.

7 I think you could consider that a
8 different case if the law didn't allow eviction of a
9 breaching tenant. But that's not what we're talking
10 about here.

11 We're talking about the choice between
12 satisfactory tenants who pay the rent, who follow the
13 rules and the objection that the landlord wants the
14 ability to choose between tenants.

15 So I think that's a significantly
16 different situation.

17 And I also just want to say that the --
18 the -- that the character of this per se physical
19 taking, and I'll get to the regulatory taking, but the
20 character of this per se physical taking is the
21 compulsion to have tenants on the property and it's
22 really not about the identity of the tenant. It's the
23 -- it's the idea that having opened the property to
24 tenants, as these Plaintiffs did, there's an inability
25 to remove tenants and to -- to have the -- to change

1 the use of the property.

2 And, as my colleague explained, there
3 are multiple avenues under the statute to change the
4 use of the property.

5 So the -- we're not in a compulsion
6 situation.

7 THE COURT: Oh, you're saying -- you're
8 saying that realistically what is going on is not
9 exclusion of tenants at all but whoever you have the
10 right to raise the rent to the tenants whom you'd be
11 perfectly happy to have but you're not excluding --
12 compelled to have anybody there. You're compelled to
13 charge them less than you want and that that's what's
14 at stake and the whole rest is just a misreading of
15 what these statutes are.

16 MR. PLATIN: I think that's exactly
17 what's going on here, Your Honor.

18 And, as my colleague pointed out,
19 there's no allegation that any of these Plaintiffs
20 actually wants to leave the rental business.

21 The objection has to be that, while
22 staying in the business, the obligation to charge --
23 not to -- the inability to charge market rents
24 constitutes a taking and it just can't be cognizable
25 as a physical taking.

1 THE COURT: Well, Mr. Platin, what --
2 what about the Pantagulous's who allege they've been
3 unable to recover a unit for their own personal use in
4 the building?

5 They can't convert the building to
6 commercial use because of zoning restrictions and
7 they've been forced to -- because of these
8 restrictions, to offer a renewal lease to a tenant who
9 they, you know, didn't want to have. They didn't want
10 to have that be a rental property.

11 Isn't that -- doesn't that state a
12 plausible as applied taking change? Taking claim?

13 MR. PLATIN: No, it doesn't, Your
14 Honor.

15 I mean, for one reason, which I think
16 you noted in the questions to the Plaintiffs' counsel,
17 the allegation is really not that there's a family
18 member waiting in the wings to take one of those units
19 and is prohibited from doing so.

20 It -- it's, you know, the wording is
21 pretty deliberate I think that the -- this family
22 member has considered entering -- using a unit for --
23 moving into the building but it doesn't say that they
24 -- she actually would.

25 So I think that that is significant.

1 But I -- also, to be a physical taking, this goes to
2 my point about the compulsion, it's not enough to say
3 that there's one particular use of the property is
4 limited. They would have to allege that there's no
5 ability to change the use of the -- of that unit and
6 they haven't alleged that other options may not be
7 available to change the use.

8 THE COURT: But is -- is your claim
9 also partly to the extent that this is not able to be
10 used in other ways, is the zoning restriction and
11 therefore what we look to is what -- when zoning is
12 valid or not?

13 That is, that really they're
14 complaining about zoning (indiscernible).

15 MR. PLATIN: Oh, I agree. I think
16 it --

17 THE COURT: (Indiscernible) it. They
18 could use for doing any number of other things and --
19 and zoning, again, if you want to look at the original
20 meaning of the taking clause, zoning may be very
21 doubtful but we've upheld zonings, which is taken up
22 to 90 percent of the value.

23 MR. PLATIN: Right. I -- I think
24 that's right, Judge Calabresi, that the -- there are
25 background restrictions. All -- of many different

1 types in New York City that limit the use of the
2 property. They're not part of the rent stabilization
3 law and there -- it's well understood that those kinds
4 of restrictions on use are not -- are not physical
5 takings.

6 And I think the same logic applies to
7 some of the complaints that the Plaintiffs have made
8 about the limit, the strictures of some of the
9 provisions about changing the use of the property, you
10 know, the -- the complaint about the -- the limitation
11 of personal use, retaking a second unit for personal
12 use.

13 Those two are properly conceived, not
14 whether they could properly be -- they could validly
15 challenged but they -- they're properly conceived of
16 is, at most, as regulatory taking challenges because
17 they limit -- the argument really is that a particular
18 limitation on a particular use of the property goes
19 too far.

20 And we know that that's conceived of in
21 the -- through the framework of regulatory takings and
22 it has no place in a physical taking challenge.

23 THE COURT: Well, but with regard to
24 regulatory takings and the as applied challenges, is
25 Seventy-Four Pinehurst and 141 Wadsworth alleged that

1 these new restrictions, since 2019, have reduced the
2 value of the buildings they own by 20 to 40 percent
3 and where it kind of specific ways that they have been
4 unable to recover costs for significant improvements
5 in the building and, you know, they had reasonable
6 expectations otherwise even given the presence of the
7 rent control or rent stabilization regime before.

8 You know, isn't that enough to satisfy
9 Penn Central in terms of regulatory takings at least
10 to make it a plausible allegation that gets them to be
11 able to move on to summary judgment?

12 MR. PLATIN: It's not, Your Honor.

13 So I'll take each of the pieces as --
14 in turn.

15 The allegation that the building's lost
16 20 to 40 percent of their value registers, I guess I
17 would say, very weakly on the economic impact factor.

18 This Court has noted that there are
19 cases have been -- were takings have not been found
20 where up to 90 percent of the value of a property has
21 been removed.

22 And this -- this is nothing approaching
23 that.

24 THE COURT: Another question.

25 MR. PLATIN: I will --

1 THE COURT: Yeah. Excuse me just a
2 second. But we're looking at that still in the
3 context of -- just a substantial economic impact is
4 required by Penn Central and then you looked at their
5 reasonable investment expectations as well as the
6 character of the -- of the use.

7 So I'm not sure that it's fair to take
8 it kind of one factor alone. I mean, that's -- it's
9 certainly if it's 40 percent, that's a substantial
10 impact; wouldn't you agree?

11 MR. PLATIN: It's substantial. I guess
12 my point is, of course, it's a multi-factor test and
13 you weigh the factors against each other.

14 But, you know, the -- this is no where
15 near the magnitude of an impact that this Court has
16 recognized would constitute a substantial diminution
17 of the value of properties.

18 So it -- I'm not saying that that --
19 there's some sort of hard cut off. What I'm saying is
20 that this -- that the economic impact weighs very
21 weakly.

22 You mentioned the -- there's a major
23 capital improvement that one of the Plaintiffs made, I
24 believe.

25 And I'll just note that --

1 THE COURT: The -- let me just ask, to
2 the extent that we're talking about the regulatory
3 taking, how relevant is it that this regulation, sets
4 of regulations, have been there for so long and have
5 been very stringent at some time and less stringent at
6 some others, and so the people who enter into this,
7 don't have the kind of expectation that would be
8 protected under that language of Penn Central?

9 I mean, how does that apply to the
10 people here who are claiming an as applied taking?

11 MR. PLATIN: Right.

12 THE COURT: Is that -- does that
13 protect them or not?

14 MR. PLATIN: It -- it doesn't. And
15 thank you for that. I want -- the District Court I
16 think rightly noted that these two Plaintiffs who
17 bring in the as applied challenges purchased in the
18 early to mid two thousands, after the rent
19 stabilization law was substantially in the form that
20 it's in now.

21 As Your Honor noted, the -- the
22 original statute was -- was more stringent. It went
23 -- it underwent changes over time that made it more
24 landlord friendly adding de-control provisions and
25 various other ways to increase rents.

1 And then it -- it swung the other way.
2 But I think --

3 THE COURT: So your argument would be
4 that whatever these financial impacts now, they're
5 ones that these people, given when they bought and
6 what happened afterwards, should have expected and so
7 they are not the kind of impacts that Penn Central was
8 talking about?

9 MR. PLATIN: Yes. That's exactly
10 right. I mean, it -- there --

11 THE COURT: We'll hear -- we'll hear
12 maybe, we haven't heard anything, but we'll hear maybe
13 from the other side about that but we haven't heard
14 anything so far. We have (indiscernible) but we
15 haven't heard any other oral argument.

16 MR. PLATIN: Well, let's -- so let me
17 just -- assuming that they are going to return to that
18 question, let me put -- say put a little meat on it,
19 more meat on the bones there.

20 I mean, the -- and anyone purchasing 30
21 years into the history of the rent stabilization law
22 would have noticed that it was a subject of repeated
23 legislative attention and amendment; that the
24 legislature was always revisiting it in response to
25 economic changes.

1 And that would be sort of baked into
2 their expectation --

3 THE COURT: In response -- in response
4 to economic changes or simply in response to political
5 changes, who happen to have control of the legislature
6 at that moment.

7 MR. PLATIN: Maybe those, too. But
8 that -- that, again, is part of the expectations any
9 reasonable owner would have.

10 And that -- you know, I just want to
11 address the idea that the 2019 changes were -- were
12 dramatic.

13 You know, in many respects, they rolled
14 back changes that had been added in the 90s early
15 2000s, preferential rents were added in 2003. The
16 decontrol provisions that removed units from
17 regulation were added in the 1990s.

18 So this -- these weren't innovations.
19 They were just the legislature re-adjusting the dial,
20 having gone one way, going back to the other.

21 And, you know, the legislature had done
22 something quite similar in 2011 and 2015 adjusting
23 some of the same provisions.

24 So the -- a landlord's expectations
25 would have to incorporate the idea that there would be

1 subsequent changes, including these two Plaintiffs' as
2 applied claims, and the 2019 amendments didn't do
3 anything more that was -- than change the matters of
4 degree.

5 THE COURT: Well, were changes of the
6 same sort going back and forth with respect to being
7 able to take over the apartment for personal use or
8 not?

9 Now I know -- but that's being argued
10 as a physical taking and so it's a different thing.

11 But I'm kind of curious about whether
12 that is something which was a change with -- that went
13 for the first time, rather than one of this back and
14 forth of other things.

15 MR. PLATIN: Yeah. That -- that one
16 hadn't been changed before, to my knowledge.

17 You're right that they're not
18 attempting to articulate a regulatory taking challenge
19 to that, is going too far.

20 There are these regulatory taking
21 challenges that are really on different aspects of the
22 scheme.

23 But that one had not been previously
24 altered.

25 THE COURT: Uh-huh. Good.

1 THE COURT: All right. Mr. Platin, you
2 want to say a last word before we move on?

3 MR. PLATIN: No. I think I'll stop
4 there. I'll rest on my brief. Thank you, Your Honor.

5 THE COURT: All right. Thank you very
6 much.

7 We'll hear from the Intervenors.

8 MS. HALLIGAN: Good morning, Your
9 Honor.

10 Kaitlyn Halligan on behalf of
11 Intervenors, New York Tents and Neighbors, Community
12 Voices Heard and Coalition for the Homeless.

13 I'd like to make three points, if I
14 can.

15 First of all, with regard to the
16 physical takings, and -- and, Judge Calabresi, your
17 exchange with Mr. Pincus, with regard to Cedar Point,
18 I would call the Court's attention to footnote four of
19 the supplemental brief in which CHIP argues that Cedar
20 Point somehow undoes Yee.

21 Even CHIP, in this footnote,
22 acknowledges, and I quote, "the continued viability of
23 that aspect of Yee is a question for the Supreme
24 Court."

25 And so it is not, as I think your

1 exchange with Mr. Pincus suggested, a question on
2 which this Court could reach a different result.

3 Yee does control here and I would like
4 to explain why.

5 In addition to the points that my
6 colleagues from the City and the State made, in fact,
7 the law in California that was at issue there is
8 strikingly similar to the law in New York.

9 And I would call the Court's attention,
10 in particular, to the provision of the California law
11 that is referenced in Yee, which is Section 798.55.

12 What that statute provided, and I'm
13 quoting here, is that management shall not terminate
14 or refuse to renew a tenancy except for the specified
15 reasons.

16 So the same renewal rights that they
17 attack here as going too far and creating a physical
18 taking, were also at play in Yee.

19 And what the Court said in Yee is that
20 it might be a different case if the landlord is
21 prohibited in perpetuity, has no exit ramps at all,
22 from ending the tenancy. But the restrictions on that
23 exit option were quite similar in California as they
24 are here.

25 And, with respect to Cedar Point, Judge

1 Carney, as your exchange suggested, that case is
2 distinguishable as even I think Mr. Pincus is
3 obligated to acknowledge in his footnote.

4 Judge Calabresi, if -- if I can respond
5 to your question with regard to the Pinnel dissent and
6 the point that Justice Scalia makes there, I think
7 that what you're referring to is the argument that he
8 makes in dissent that -- that if there is not a
9 connection that is required between the land use at
10 issue and the social problem that a regulation
11 attempts to remedy, that perhaps regulations could go
12 too far.

13 And what the Supreme Court explains in
14 *Lingell* (ph) is two things in response to that
15 concern.

16 The Court says, first of all, that
17 these questions about fairness and justice are
18 addressed by applying the Penn Central factors with
19 regard to a regulatory takings challenge.

20 And, secondly, and this is at page 542
21 in *Lingell*, what the Court says in *Lingell* is that the
22 inquiry about whether or not a regulation
23 substantially advances, and does so fairly, a
24 legitimate government interest.

25 That is a question that is addressed by

1 the due process clause because that is a challenge
2 that is really probing a regulation's validity and
3 asking whether or not it is arbitrary.

4 The litigants here have brought due
5 process challenges. They argue with really no defense
6 that strict scrutiny applies. Rational review applies
7 and, clearly, these provisions, including the 2019
8 amendments, are -- are certainly well within the range
9 of -- of what should survive that sort of scrutiny.

10 I really want to turn, if I can, to the
11 impact here and Judge Parker, you asked about this.

12 It is clear, as my colleague, Ms.
13 Murdakava points out, that if you looked at the prayer
14 for relief, they are asking this Court to enjoin the
15 application of the RSL, in its entirety, and that
16 would have the consequences that she laid out.

17 What that would mean, very
18 specifically, and this is set forth in the
19 Intervenor's brief at page 10 and I would also draw
20 the Court's attention to the Amicus briefs on this
21 point, nearly a million apartments, which is 44
22 percent of the rental stock in this city, would be up
23 for grabs. In other counties, 36,000 apartments.
24 That would affect 2.3 million people who be left to
25 fend for themselves.

1 And, in addition to the number that Ms.
2 Murtakava cited, the record shows that 43 percent of
3 the folks in family shelters are one who have been
4 displaced from rent regulated apartments.

5 If this Court were to enjoin
6 application of the rent stabilization laws as my
7 adversaries suggest, that number would clearly go
8 through the ceiling and the consequences would be
9 catastrophic.

10 So they certainly have not alleged
11 anything that would allow them to proceed. But, in
12 addition, the consequences of what they're asking for,
13 would be Draconian.

14 If the Court has any questions, I'm
15 happy to address them.

16 THE COURT: Thank you.

17 THE COURT: Thank you very much.

18 THE COURT: Thank you. Thank you.

19 THE COURT: Mr. Pincus, you have
20 several minutes rebuttal.

21 MR. PINCUS: Thank you, Your Honor.

22 I think my friends on the other side
23 are confusing the critical distinction that we're
24 trying to draw.

25 Our physical takings claim, before this

1 Court, is about conscripting owners to force them to
2 keep units in the rental market when they want to use
3 them for themselves, use them for commercial purposes,
4 demolish them, turn them into condos, for uses non-
5 residential rental uses.

6 We are not, and the footnote that Ms.
7 Halligan referred to, we are not saying that it is a
8 physical taking if the unit remains in the residential
9 rental market.

10 We are not arguing before this Court,
11 and that's what the footnote says, that forcing --
12 that preventing the owner from choosing the tenant is
13 a physical taking.

14 Yee indicates that that draws that
15 precise distinction. We're not asking this Court, for
16 the reasons Judge Calabresi mentioned, to go beyond
17 where the Supreme Court went in Yee and where we
18 think --

19 THE COURT: Mr. Pincus, I'm just --

20 MR. PINCUS: -- (indiscernible) --

21 THE COURT: Let me -- let me ask you
22 this.

23 THE COURT: (Indiscernible) the relief
24 you've asked for is declaratory injunctive relief
25 declaring the whole of the rent stabilization law

1 unconstitutional as a facial matter.

2 MR. PINCUS: Well, Your Honor --

3 THE COURT: (Indiscernible) -- do you
4 still want that? Is that something you want?

5 MR. PINCUS: That is not the relief we
6 are seeking on our physical takings claim. That is
7 the --

8 THE COURT: (Indiscernible) --

9 MR. PINCUS: -- claim.

10 THE COURT: Can I -- is that a relief
11 you are seeking?

12 MR. PINCUS: That is certainly the
13 relief we seek with respect to our regulatory taking
14 claim.

15 THE COURT: All right. And so in the
16 -- suppose you win, let me ask you to give us your
17 views on the consequences of that, Ms. Halligan and
18 Ms. Murdakava, presented to us.

19 MR. PINCUS: Given the reality --

20 THE COURT: How are -- how are we to
21 grapple with that reality?

22 MR. PINCUS: We don't believe that we
23 say this in the complaint, that the New York
24 legislature will not enact a new law. It will enact a
25 new law based on the guideline that the Courts provide

1 about what the constitutional limits are --

2 THE COURT: That's sheerly speculative.

3 THE COURT: Yes, it is.

4 THE COURT: And (indiscernible) --

5 MR. PINCUS: (Indiscernible) --

6 THE COURT: -- are we clear that
7 (indiscernible) the New York City housing market
8 (indiscernible) --

9 THE COURT: Why don't you ask for some
10 small relief like saying that the right to exercise
11 your own apartment and your own ownership for your own
12 can't be limited to one and that is the only thing
13 that we are trying to strike down or something?

14 Why don't you focus on those things
15 which make it compulsory given that you've said that
16 many things that make it compulsory or not.

17 Why don't you --

18 MR. PINCUS: Your Honor, I guess --

19 THE COURT: -- (indiscernible) --

20 MR. PINCUS: I guess I would say a
21 couple of things.

22 The prayer for relief in complaints are
23 generally broad. We've not been asked to refine our
24 prayer for relief.

25 Clearly, the case has been. But the

1 physical takings claim --

2 THE COURT: Well, it -- it's -- it's
3 your --

4 MR. PINCUS: -- (indiscernible) --

5 THE COURT: It's yours. It's nobody
6 else's.

7 MR. PINCUS: It is, Your Honor. And if
8 we win on our broad theory, including we had a -- we
9 have a due process claim, we believe that's the
10 appropriate relief.

11 On physical takings, we do have a more
12 targeted claim. Our claim is if an owner --

13 THE COURT: So are you telling us
14 you're not -- you're not really serious about the as
15 applied challenge? Are you --

16 MR. PINCUS: We don't have an as
17 applied challenge in our case, Your Honor.

18 THE COURT: I'm sorry.

19 THE COURT: It's a facial -- on the
20 facial change --

21 THE COURT: You're not serious about
22 the facial change -- challenge?

23 MR. PINCUS: We are serious about --

24 THE COURT: (Indiscernible) about the
25 facial challenge --

1 MR. PINCUS: Our --

2 THE COURT: I'm sorry.

3 MR. PINCUS: Our -- the legal theory of
4 our physical takings claim is that the RSL is --
5 effects a taking to the extent it prevents an owner
6 who wishes to leave the residential rental market --

7 THE COURT: Mr. Pincus, I have to
8 interrupt. I -- what the -- what the prayer for
9 relief says, on your complaint, on J-145, is that we
10 enjoin the application and enforcement of the rent
11 stabilization laws as an unlawful physical taking of
12 private property.

13 There is no qualification. There's no
14 limitation. There's no subset. There's no in these
15 particular circumstances.

16 There's no -- there's no shaping or
17 contouring that -- inconsistent with what you've just
18 been telling us.

19 MR. PINCUS: Well, Your Honor, a -- it
20 was the prayer for relief in our complaint. If we
21 prevail before the Supreme Court on the broad claim,
22 we're not pressing here, we think that relief may well
23 be appropriate.

24 But I'm focusing on the relief that
25 would be appropriate for the claim that we are --

1 THE COURT: But, Mr. Pincus --

2 THE COURT: I'M -- I'm now very
3 confused on where we are on this.

4 THE COURT: What is it you want us to
5 do?

6 MR. PINCUS: Well, I mean, what we'd
7 like you to do --

8 THE COURT: (Indiscernible) --

9 MR. PINCUS: -- is to reverse the
10 (indiscernible) --

11 THE COURT: (Indiscernible) --

12 MR. PINCUS: The District Court held
13 (indiscernible) --

14 THE COURT: Counsel, we have what you
15 asked us to do. You now have said maybe that's
16 something that the Supreme Court could do.

17 But we're not the Supreme Court. We're
18 a lower court. And you're asking us to do something
19 which on your very statements now goes beyond what any
20 of the previous cases would allow us to do.

21 So what do you want us to do? Say they
22 don't really mean it?

23 MR. PINCUS: No. We are seeking that
24 relief. That is the relief we believe on our -- the
25 broadest theory of our claim.

1 We're focusing here on the physical
2 taking claim and where we think the current Supreme
3 Court jurisprudence is.

4 And, as I explained, I think my friends
5 on the other side have made -- have drawn a
6 distinction that --

7 THE COURT: No, no, no. No, no, no.

8 Your entire complaint is up here for
9 review. Your complaint was dismissed below on
10 12(b)(6). So your notice of appeal brings it all up
11 here. It doesn't bring it up here piecemeal. It
12 doesn't bring up just your -- your regulatory taking
13 claims and not another claim.

14 MR. PINCUS: No. We -- we --

15 THE COURT: And it brings up -- it
16 brings up to us to consider in its entirety the relief
17 you've requested.

18 MR. PINCUS: And, Your Honor, I don't
19 think it would be appropriate if -- if the complaint
20 states a plausible allegation of a constitutional
21 violation but the relief may be somewhat narrower, I
22 don't think it would be appropriate for this Court to
23 say because the prayer for relief is broad --

24 THE COURT: We throw out --

25 MR. PINCUS: -- we (indiscernible) --

1 THE COURT: We throw out -- counsel, we
2 throw out cases all the time brought by people who
3 have miserable lawyers because they have asked for
4 something which goes beyond what their complaint
5 justifies.

6 MR. PINCUS: Well, we think out
7 complaint --

8 THE COURT: (Indiscernible) very good
9 lawyers. Very good.

10 MR. PINCUS: We think --

11 THE COURT: Who think this is
12 wonderfully argued but it's very good lawyers ask for
13 something which is beyond what we can give. Why
14 should we give it? Why should we say, they might have
15 asked for something else, which might have saved
16 something in a situation which is fairly complicated.

17 MR. PINCUS: Well, Your Honor, we think
18 that our claims -- we are entitled to the relief we
19 seek.

20 If the Court disagrees, obviously, it
21 will find the relief more limited.

22 We believe that from physical takings
23 claim, because both the area that I've been focusing
24 on, which is keeping units in the rental market, is
25 impermissible under Cedar Point and Yee and because

1 the compulsion to renew a lease is impermissible under
2 Cedar Point, we're entitled to broad relief under
3 those -- under that claim and on the regulatory
4 takings claim, which we haven't really talked about,
5 we think we're -- that that is a claim that is based
6 on all of the impositions together, that the RSL
7 imposes on property owners.

8 THE COURT: So do -- do you want
9 relief? Do you want the relief you seek?

10 MR. PINCUS: Yes. We do.

11 THE COURT: Do you want all -- do you
12 want all the relief you seek?

13 MR. PINCUS: We want all the relief we
14 seek. As I said before --

15 THE COURT: Okay.

16 MR. PINCUS: -- we don't believe that
17 that will lead to the consequences Ms. Halligan
18 hypothesized because we think the New York legislature
19 will intervene and enact a lawful law that will deal
20 with New York's situation but in a way that is not
21 unconstitutional.

22 And, of course, New York --

23 THE COURT: Entirely -- entirely
24 speculative. Who knows what, when, might happen.

25 MR. PINCUS: New York also has the

1 option of paying compensation. And, if I can say it
2 (indiscernible) --

3 THE COURT: Mr. Pincus, you want to say
4 we've been interrupting you a lot. Say your last word
5 and then we'll finish up.

6 MR. PINCUS: Well, I guess --

7 THE COURT: Let me -- let me just say
8 one thing. You know, in some ways what you're
9 suggesting is a very different approach which is taken
10 in Europe of saying a court, like ours, saying to the
11 legislature look. What we have before us, we don't
12 strike down because it goes too far.

13 On the other hand, there are any number
14 of problems here that are heading towards
15 unconstitutionality. Legislature, you'd better think
16 about it and come back.

17 That's something we don't do much in
18 this country. But it's something that courts in
19 Europe do all the time.

20 Now that's a different kind of a
21 holding. It says you lose now but we say something to
22 the legislature.

23 Now is that --

24 MR. PINCUS: I guess, Your Honor, what
25 -- what I'm suggesting is that we win now but the

1 legislature will take account of that and address --
2 and react to is as legislatures often do.

3 If I can just make two additional
4 points.

5 THE COURT: Okay, two.

6 MR. PINCUS: Judge Calabresi, you
7 raised the Pinnel dissent. We think that is totally
8 applicable here as we say in our briefs.

9 The New York Court of Appeals
10 specifically said this is a benefit that targeted on
11 specific populations that is paid for by a discrete,
12 off the books, by a discreet group of home -- of
13 property owners.

14 With respect to regulatory takings, we
15 argue it in our briefs. And I'll just make one point
16 about the question about investment backed
17 expectations.

18 The Supreme Court in the Palazollo (ph)
19 case and then in the Merck (ph) case, said the fact
20 that someone bought after a regulation was in effect
21 does not, per se, invalidate their takings claim.

22 It is a factor to be considered.

23 And so we do not think that is a basis
24 for dismissal of our regulatory takings claim.

25 THE COURT: Thank you very much, Mr.

1 Pincus. Okay. Mr. King.

2 MR. KING: Thank you, Your Honors.

3 A few quick points on rebuttal and I
4 appreciate the Court's indulgence on the time. These
5 are important issues and they deserve the careful
6 consideration you've been giving. So we appreciate
7 that.

8 I'll start with the remedy question,
9 Judge Parker, that you were asking.

10 You know, we're here on a motion to
11 dismiss, a 12(b)(6) and so really the question, from
12 our perspective, is have we stated a claim.

13 We believe that we have both facially
14 and as applied. And that, if you rule in our favor on
15 that question, the only thing that will happen is that
16 this case will go back to the District Court for
17 development of a record and either summary judgment
18 proceedings or trial. The remedy would come later.

19 So we think that simplifies the
20 analysis a great deal.

21 Second, even if the RSL is declared to
22 be a physical taking, the government would still have
23 every ability to regulate the amount of rent that's
24 charged when an owner chooses to rent out a unit to a
25 third party.

1 That would not be affected by our
2 physical takings claim.

3 The thing that would be affected is
4 that the government would not be able to do, as the
5 RSL was amended in 2019 does, compel the owner to rent
6 that unit when the owner doesn't want to.

7 That's really the gravamen of our
8 physical takings claim is you can't force us to rent
9 when we don't want to rent and Cedar Point fully
10 supports our claim in that regard as does Yee.

11 Yee says that if a law, on its face, or
12 as applied, compel owners to continue renting, that's
13 going to be a taking and that's what we've alleged
14 here, on an as applied basis which, by the way, the
15 Yee Plaintiffs did not do.

16 THE COURT: Look, Judge Calabresi -- I
17 mean, I think made a very very astute point that there
18 are procedures available in lots of European countries
19 that are not available here and I think it was
20 foreshadowed by arguments that Mr. Pincus made that
21 this is -- this is a case that cries out for a more
22 sensible legislative fix.

23 And I suppose the practical problem we
24 face is -- I think it's -- as a aside, you know, we
25 all agree that there are anomalies in this law. And,

1 like many regulatory regimes, it could be improved.
2 It could be modified and so forth.

3 But what's our -- what's our lever to
4 do that?

5 MR. KING: And so, Your Honor, first
6 off, I would say --

7 THE COURT: Without wreaking chaos in
8 the city?

9 MR. KING: We wholeheartedly agree that
10 there's no need to wreak chaos and that there -- you
11 know, that this law cries out for some targeted
12 changes.

13 And so, if you were to agree with us,
14 on the merits, if we got to that point, on our
15 physical takings claim, you know, one of the sort of
16 scalpel rather than sledge hammer maneuvers that --
17 that a Court could take here would be to say that the
18 compelled renewal provision is out or that some of the
19 other changes, the fundamental changes adopted in 2019
20 are out.

21 We are not challenging the law as it
22 existed before May 2019.

23 Now there may be good arguments that
24 that law has problems. Mr. Pincus has raised them.

25 But we're not asserting those here.

1 And so I think, you know, it would not be some
2 fundamental shift to set the law back to the way it
3 was in April of 2019 for example. And that's just one
4 way that a court might go about addressing your
5 question, Judge Parker.

6 As for our as applied physical takings
7 claims, the Pantagulous Plaintiffs have alleged that
8 a specific rent stabilized apartment, the one that
9 Maria Pantagulous is interested in, and I'm quoting
10 Appendix Page 52, which is our complaint, that
11 specific apartment is taken, physically occupied by
12 the 2019 amendments.

13 There is nothing, literally nothing,
14 the Pantagulous Plaintiffs can do, they have alleged,
15 to get that particular apartment back.

16 And so, you know, you can have the more
17 abstract discussion about other apartments and bigger
18 numbers and millions of people, but, here, on an as
19 applied claim, we're making a very specific allegation
20 that fits hand in glove into the exception in Yee
21 which says that, you know, again, if an owner is
22 compelled to renew over objection --

23 THE COURT: But she said she would move
24 into that apartment.

25 MR. KING: She said she'd like to move

1 in. Yes.

2 THE COURT: I thought she said she was
3 considering and she was kind of generally interested
4 and, of course, there was no allegation that she was
5 disabled from living in the building altogether,
6 right?

7 It was this one particular unit, she
8 was considering.

9 MR. KING: Well, it -- what -- in
10 addition to saying considering, I'm just quoting here
11 from the fourth line of paragraph 64 of our complaint,
12 it says she's interested in living in this unit.

13 And the fact that she could maybe live
14 in some other unit doesn't really answer the question
15 pointed out by Yee and Cedar Point which is is this
16 particular apartment, this stabilized apartment that
17 she'd like to live in, is it being == you know, is
18 there compelled occupation and we have alleged, on an
19 as applied basis, that the answer is yes.

20 And, on that point, I do want to point
21 out that Ms. Halligan is in error when she asserts
22 that the purported off ramps in the RSL are similar to
23 the off ramp that was dispositive in Yee. That is not
24 correct. Categorically not correct.

25 The law in Yee gave owners an

1 unqualified right, on twelve months notice, to evict
2 all of their tenants and put that land to a different
3 use, without relying on any action by the tenants and
4 without any third party approvals.

5 And I would point you to Section 79 --
6 798.56(g)(2)(b) of that California statute which says,
7 again, on twelve months notice, the owner can kick
8 everybody out and do something else with the property.

9 That is, in fact, what the Pantagulous
10 Plaintiffs have alleged they want to do here.

11 As to that apartment, they want to exit
12 the rental market. They want to use that for
13 themselves.

14 So we think that's a critically
15 important difference and a reason why our as applied
16 claim is plausible here.

17 THE COURT: All right. Thank you very
18 much.

19 MR. KING: Thank you, Your Honors.

20 THE COURT: Thank you all.

21 THE COURT: Thank you all.

22 THE COURT: Wonderfully interesting
23 case. Well argued. Well briefed. We are fortunate
24 to have (indiscernible) as you all.

25 THE COURT: Wonderfully argued by

1 everybody.

2 THE COURT: Yes. Thank you all. And
3 the Clerk will please adjourn Court. That concludes
4 our proceedings for the morning.

5 THE CLERK: Court stands adjourned.

6

7 (End of proceeding)

8

9

10

11

12

13

14

15

16

17

18

19

20

21

22

23

24

25

1
2
3
4
5
6
7
8
9
10
11
12
13
14
15
16
17
18
19
20
21
22
23
24
25

I N D E X

A R G U M E N T

PARTY	PAGE
COMMUNITY HOUSING BY MR. PINCUS	4
SEVENTY-FOUR PINEHURST BY MR. KING	24
STATE APPELLEES BY MS. MORJAKAVA	42
CITY APPELLEES BY MR. PLATIN	59
INTERVENORS BY MS. HALLIGAN	74
COMMUNITY HOUSING REBUTTAL BY MR. PINCUS	78
SEVENTY-FOUR PINEHURST REBUTTAL BY MR. KING	90

C E R T I F I C A T I O N

I, Pamela Skaw, certify that the foregoing transcript
is a true and accurate record of the proceedings.

/s/ Pamela A. Skaw

Date: March 15, 2022

1	21-476 1:6 3:6 24 97:7	966,000 13:23	78:12 94:10	
10 77:19 12 85:10 90:11 121 56:24 122 56:24 141 67:25 144 56:24 145 56:24 83:9 15 98:11 16 1:3,15 1800 1:24 1801 1:23 19103 1:24 1970 18:24 1970s 10:21 1990s 72:17	3 30 71:20 36,000 77:23	a	additional 11:5 22:8 89:3 additions 26:11 address 32:25 47:8,10 52:23 53:11,15 60:6,15 72:11 78:15 89:1 addressed 60:16 76:18,25 addressing 60:23 93:4 adjourn 96:3 adjourned 96:5 adjusting 72:19,22 adopted 37:3 92:19 advances 76:23 adversaries 78:7 affect 77:24 affirm 43:9 60:2 affirmed 6:3 agree 6:16 20:25 24:13 25:13 35:1 37:20 66:15 69:10 91:25 92:9,13 agreeing 13:18 agricultural 7:11 allegation 39:18 40:1,9,25 41:3 64:19 65:17 68:10 68:15 85:20 93:19 94:4 allegations 46:23 allege 38:8,12,14 49:21 65:2 66:4 alleged 15:4 24:20 29:16 39:5 40:14 41:10 66:6 67:25 78:10 91:13 93:7 93:14 94:18 95:10	
2	4 97:6 40 68:2,16 69:9 42 97:8 43 78:2 44 77:21	abatement s 13:16 ability 27:25 28:14 30:7 33:10 50:3 61:25 63:14 66:5 90:23 able 9:3 10:7 34:16 36:9,10 39:24 47:5 57:24 66:9 68:11 73:7 91:4 abortion 54:18,19 54:22 absolutely 42:3 abstract 93:17 absurd 36:12 absurdities 19:12 accept 60:24 accepting 61:2 accommodation 61:13 account 22:21 89:1 accurate 98:4 achieved 36:20 acknowledge 76:3 acknowledges 74:22 acquiesced 45:5 acquiescence 33:13 act 61:8 action 95:3 acts 63:5 actual 33:19 ad 56:8 added 72:14,15,17 adding 70:24 addition 25:2 60:19 75:5 78:1	5 50 25:23 26:1 36:11 51 41:3 52 41:4 93:10 542 76:20 59 97:9	
2 95:6 2.3 77:24 20 68:2,16 20-3366 1:5 2:3 3:4,11 2000s 72:15 2003 72:15 2011 72:22 2015 72:22 2019 5:5,11,12 19:20 24:21 25:1 26:12 27:6,12,14 27:15 28:1,14 29:11 33:6 34:21 34:24 35:22 36:19 37:6 38:1 39:8 41:8 48:11 49:8 58:15 62:24 68:1 72:11 73:2 77:7 91:5 92:19,22 93:3,12 2022 1:3,15 98:11	6 6 85:10 90:11 61 41:13 62 41:13 64 94:11			
	7 74 97:10 777-6690 1:25 78 97:11 79 95:5 798.55. 75:11 798.56 95:6			
	8 85 13:22 888 1:25			
	9 90 66:22 68:20 97:12 90s 72:14			

alleges 3:24 allow 6:17 7:13 51:9 63:8 78:11 84:20 allowed 11:16 33:7 alterations 48:11 altered 73:24 altogether 38:11 38:22 39:3,23 45:16 56:1 94:5 amended 24:21 25:1 34:24 38:1 91:5 amendment 16:12 17:2,3 41:9 71:23 amendments 19:20 27:6 35:22 36:20 39:8 58:16 73:2 77:8 93:12 amicus 77:20 amount 9:3 30:13 90:23 amounts 5:6 analysis 30:15 90:20 angeles 17:5 anomalies 91:25 answer 52:8,8 94:14,19 answering 27:12 anti 62:10 anybody 64:12 apartment 28:20 28:25 30:8 36:9 44:7 73:7 81:11 93:8,11,15,24 94:16,16 95:11 apartments 13:12 13:14,20,23 29:3,6 31:3 32:9,12,18	33:8 34:17 36:11 37:11 39:15 41:17 77:21,23 78:4 93:17 appeal 85:10 appeals 1:1 6:13 36:24 89:9 appearances 1:20 2:1 appellant 1:4,10 2:2 appellants 24:9 40:14 43:3,7 45:20 46:20 49:14 51:17 53:24 56:19 56:22 appellate 1:17 appellee 1:7,13 2:4 appellees 2:6,7,9 3:15,15,16 43:2 59:17 97:8,9 appendix 41:4 56:24,25 93:10 applicable 54:18 89:8 application 57:1 57:11 58:11 77:15 78:6 83:10 applications 14:22 26:14 53:22 applied 6:25 11:23 13:11 25:5 29:17 32:22 38:6,9 40:14 41:24 42:5 42:9,14,16 43:16 47:6,8 49:12 50:1 50:14 54:21 56:5 59:5 65:12 67:24 70:10,17 73:2 82:15,17 90:14 91:12,14 93:6,19	94:19 95:15 applies 13:17 21:17 54:15 67:6 77:6,6 apply 13:13 16:4 24:18 25:20 29:18 30:12 53:17,19,23 53:24 57:7 70:9 applying 76:18 appreciate 3:9 24:6 90:4,6 approach 88:9 approaching 68:22 appropriate 82:10 83:23,25 85:19,22 appropriates 4:23 5:1 appropriation 43:25 approvals 95:4 approximately 13:23 april 93:3 arbitrary 77:3 area 86:23 argue 53:6 77:5 89:15 argued 25:18 73:9 86:12 95:23,25 argues 74:19 arguing 45:22 59:4 79:10 argument 1:14 14:19 16:11 41:19 41:24 42:9 47:12 58:20 59:11 61:22 67:17 71:3,15 76:7 arguments 43:12 46:20,21 49:14	60:19 91:20 92:23 articulate 73:18 aside 51:18 52:3 56:16 91:24 asked 13:4 14:14 16:18 56:23 57:9 77:11 79:24 81:23 84:15 86:3,15 asking 12:23 13:1 13:3 31:1 50:3 77:3,14 78:12 79:15 84:18 90:9 aspect 49:24 74:23 aspects 14:23 73:21 assert 50:1 asserting 92:25 asserts 94:21 assume 15:16 assumed 44:19 assuming 71:17 assumptions 52:10 astute 91:17 atlanta 61:7,17 attached 48:9 attack 75:17 attempt 11:1 attempting 73:18 attempts 59:25 76:11 attention 71:23 74:18 75:9 77:20 audio 39:13 41:7 authoritative 37:1 authority 52:6 authorized 48:19 authorizes 17:12 authorizing 17:3 availability 46:17 available 33:22 55:14 56:2 66:7
--	--	--	--

<p>91:18,19 avenues 64:3 aware 54:20</p>	<p>bigger 93:17 binding 60:17 blunt 22:18 body 54:25 bones 71:19 bonto 26:23 books 57:6,17 58:17 89:12 bought 23:8 55:4 71:5 89:20 bound 6:14,23 bowl 34:7 breaches 63:5 breaching 63:9 brief 74:4,19 77:19 briefed 35:9 95:23 briefly 53:11 briefs 45:13 77:20 89:8,15 bring 47:6 49:25 56:6 58:25 70:17 85:11,12 brings 85:10,15,16 broad 58:24 81:23 82:8 83:21 85:23 87:2 broader 50:16 58:22 broadest 84:25 brought 5:11 77:4 86:2 bryers 13:6 budakava 42:24 building 18:6,14 28:5 32:17 39:7 39:15 41:5,11 46:7,11 65:4,5,23 68:5 94:5 building's 68:15</p>	<p>buildings 31:2 68:2 burden 52:15 business 7:18,20 9:15 11:17 14:20 14:23 26:7 46:13 61:1 64:20,22 buyer 46:8 buyers 46:9</p>	<p>catastrophic 78:9 categorically 29:4 94:24 category 17:15 cedar 4:17,21 5:25 6:1,23,25 7:2,4,9 8:5,10,11,20,20,23 8:25 9:6,17 13:4 15:1 21:12 22:22 23:4 24:14 47:9 47:10,13,15,22,23 48:7,14,16 60:16 61:16 62:5 74:17 74:19 75:25 86:25 87:2 91:9 94:15 ceiling 78:8 central 68:9 69:4 70:8 71:7 76:18 century 59:19 certain 9:3 22:21 25:5 certainly 5:23 24:13 27:22 31:5 33:3 36:21 47:14 53:18 59:3 69:9 77:8 78:10 80:12 certify 98:3 challenge 5:10 8:7 11:9 14:11 16:22 17:1,3,6 24:25 25:4,6,16 26:3 38:7 42:7,15,16 49:11,12 50:1 53:16,21 56:5,9 59:5 61:9,11,11 67:22 73:18 76:19 77:1 82:15,17,22 82:25 challenged 54:2 67:15</p>
<p>b</p>	<p>c</p>	<p>c 3:1 98:1,1 calabresi 24:15 29:17 32:25 33:13 66:24 74:16 76:4 79:16 89:6 91:16 calendar 3:3 california 75:7,10 75:23 95:6 call 74:18 75:9 cap 50:6 capital 69:23 careful 90:5 carney 16:18 30:25 76:1 case 1:4 9:20 11:7 11:22 21:11 24:11 24:23 25:8,19 26:25 28:12 32:3 33:12,16 35:11 37:3,13,25 43:13 51:8 54:20 55:5 60:7 61:7,8 63:8 75:20 76:1 81:25 82:17 89:19,19 90:16 91:21 95:23 cases 3:3,3 9:5,11 9:11 24:16,19 49:12 51:7,8,14 56:15 59:1 62:22 68:19 84:20 86:2</p>	
<p>b 85:10 90:11 95:6 back 10:22 11:18 16:6 17:22 19:12 19:16 23:19 29:5 35:13 39:7 41:5 44:7 48:25 72:14 72:20 73:6,13 88:16 90:16 93:2 93:15 backed 89:16 background 19:1 19:7 41:7 66:25 baked 72:1 based 7:4 80:25 87:5 basic 26:4,5,9 basically 23:7 basis 12:24 23:6 29:17 40:15 50:11 56:9 58:21 89:23 91:14 94:19 bedroom 34:11 began 44:15 beginning 34:13 behalf 59:16 74:10 believe 20:8 25:11 47:13 69:24 80:22 82:9 84:24 86:22 87:16 90:13 benefit 37:15 50:20 51:1 53:6 89:10 benefits 50:20 52:15 53:2 better 22:15 88:15 beyond 9:3 79:16 84:19 86:4,13</p>			

<p>challenges 8:9,9 43:7,16,16 55:17 56:14,16 60:2 67:16,24 70:17 73:21 77:5</p> <p>challenging 5:10 92:21</p> <p>change 9:1,9 10:7 10:24 20:9 22:14 22:15 27:19 31:19 34:21 35:17,18 40:9 55:2 63:25 64:3 65:12 66:5,7 73:3,12 82:20,22</p> <p>changed 6:10 22:6 23:22 27:23 31:14 47:13,16 73:16</p> <p>changes 5:11,18 22:8 27:15 35:23 37:4 44:22 49:7 70:23 71:25 72:4 72:5,11,14 73:1,5 92:12,19,19</p> <p>changing 67:9</p> <p>chaos 92:7,10</p> <p>character 63:18 63:20 69:6</p> <p>characterized 31:6</p> <p>charge 34:14 57:24,25 64:13,22 64:23</p> <p>charged 30:13 90:24</p> <p>chip 56:24 74:19 74:21</p> <p>choice 61:3 63:11</p> <p>choose 61:3,25 63:14</p> <p>chooses 90:24</p>	<p>choosing 79:12</p> <p>circuit 1:1 51:19</p> <p>circumstance 8:4 17:25</p> <p>circumstances 10:11,18 17:7,9 25:5 27:2 29:19 53:3 58:3 83:15</p> <p>cited 54:12 61:6 61:17 78:2</p> <p>citizens 25:15</p> <p>city 1:6 2:7 3:5,15 11:12 13:12,21 17:5 30:18 32:17 53:9 57:7 58:18 59:12,16,19,23 67:1 75:6 77:22 81:7 92:8 97:9</p> <p>city's 43:5</p> <p>civil 61:8</p> <p>claim 4:2 9:14 11:10 12:11 13:2 15:8,9,10,12 16:12 16:14,19,21 17:13 17:14 18:16 19:19 19:21 21:14 23:10 30:17 33:4 35:8 37:23,25 39:24 40:1 45:17 46:2 46:19 47:6 50:13 65:12 66:8 78:25 80:6,9,14 82:1,9 82:12,12 83:4,21 83:25 84:25 85:2 85:13 86:23 87:3 87:4,5 89:21,24 90:12 91:2,8,10 92:15 93:19 95:16</p> <p>claiming 27:13 70:10</p>	<p>claims 5:24 18:16 24:10,14 26:19 43:13,14 60:5,7 73:2 85:13 86:18 93:7</p> <p>clarify 45:3</p> <p>class 54:13</p> <p>claud 59:16</p> <p>clause 50:19 51:6 61:10 66:20 77:1</p> <p>clauses 51:4</p> <p>clear 6:18 37:4 40:14 44:25 47:1 52:2 55:20 77:12 81:6</p> <p>clearly 21:18 77:7 78:7 81:25</p> <p>clerk 96:3,5</p> <p>clerked 36:22</p> <p>clever 52:1</p> <p>close 41:19,21</p> <p>coalition 74:12</p> <p>cognizable 64:24</p> <p>colleague 60:15 64:2,18 77:12</p> <p>colleagues 75:6</p> <p>combined 5:12</p> <p>come 7:14 8:1,2 9:8 35:13 36:12 88:16 90:18</p> <p>comes 48:25</p> <p>commerce 61:10</p> <p>commercial 41:12 46:12 65:6 79:3</p> <p>community 1:3 2:2 3:5,10 52:22 74:11 97:6,11</p> <p>company 1:23</p> <p>compel 11:23 91:5 91:12</p>	<p>compelled 4:8 21:9 30:23 31:7 43:24 64:12,12 92:18 93:22 94:18</p> <p>compels 11:13 15:2 29:9 38:1</p> <p>compensation 88:1</p> <p>complain 14:23</p> <p>complaining 5:17 5:18 35:16 66:14</p> <p>complaint 3:24 16:5 49:24 57:10 67:10 80:23 83:9 83:20 85:8,9,19 86:4,7 93:10 94:11</p> <p>complaints 43:10 67:7 81:22</p> <p>completely 57:13</p> <p>complicated 86:16</p> <p>comply 16:6</p> <p>complying 50:8</p> <p>comprehensive 43:4 56:17</p> <p>compulsion 63:21 64:5 66:2 87:1</p> <p>compulsory 81:15 81:16</p> <p>conceivable 59:5</p> <p>conceived 67:13 67:15,20</p> <p>concern 76:15</p> <p>concludes 96:3</p> <p>conclusion 15:2 21:9</p> <p>condominiums 46:11</p> <p>condos 79:4</p> <p>conduct 17:12 18:3</p>
---	--	---	--

confirms 7:6 confused 84:3 confusing 78:23 connection 76:9 conscripted 43:18 conscripting 79:1 consent 17:8 consequences 77:16 78:8,12 80:17 87:17 consider 63:7 85:16 consideration 90:6 considered 65:22 89:22 considering 40:23 94:3,8,10 consistent 15:1,6 54:24 consolidated 1:4 3:4 constitute 27:16 28:21 60:25 61:18 62:2 69:16 constituted 27:21 constitutes 4:10 4:19 16:14 64:24 constitution 4:1 16:7 49:6 constitutional 5:20,21,25 6:12 35:6 40:4 43:7 55:16 56:14 81:1 85:20 constrains 48:13 constraints 49:3 context 20:1,9 21:17,19 54:22 69:3 continuation 27:7	continue 10:14 11:14 19:14,14,14 42:15 45:22 53:3 91:12 continued 38:2 74:22 contouring 83:17 contrary 32:1 control 6:3,9 7:17 19:13 28:17 32:2 33:7 36:15 50:25 68:7 70:24 72:5 75:3 controlled 19:10 controlling 8:5 26:24 60:13 controls 45:24 49:2 conversation 60:6 convert 46:10,12 65:5 copeland 26:19 correct 21:8 25:7 42:13 52:13 94:24 94:24 corresponding 48:4 costs 68:4 counsel 3:8 51:17 51:25 62:4,4 65:16 84:14 86:1 counsel's 47:12 counties 77:23 countries 91:18 country 54:9 88:18 couple 60:4 63:1 81:21 course 6:22 7:15 26:23 28:11 61:8 69:12 87:22 94:4	court 1:1,23 3:2 3:20,23 4:18,21 5:2,16 6:1,2,6,8,10 6:13,14,22,24 7:2 7:3,5,8 8:15,18,20 9:22,25 10:4,6,12 10:14,17 11:10,15 11:19,21 12:2,5,9 12:18,20,21,22,23 13:5,7,8,10,19 14:5,8,14 15:13,16 15:19,23 16:2,8,20 17:11,19,20,22 18:8,10,12,22 19:3 19:6,9,22,25 20:4 20:10,12,13,15,16 20:18,22,25 21:1,5 21:8,18,21,23 22:3 22:7,8,20,22,24 23:4,11,14,16,17 23:18,21,23 24:1,4 24:19 25:3,10,15 25:22 26:4,22 27:9,11 28:2,8,19 29:21,25 30:2,16 31:11,13 32:5,8,19 32:21,24 33:12,17 34:9,12 35:3,5,15 35:25 36:2,24,25 37:10,12,20 38:3,5 38:16,18,25 39:2 39:10,14,21 40:8 40:19,22 41:2,16 41:18 42:1,6,8,17 42:18,20 43:1,9,11 44:2,3,11,13 47:1 47:9 48:7,25 50:15 51:8,14,18 51:20,22,24 52:4 53:13 54:11 55:3 55:19 56:7,23	57:3,9,15 58:2,6 58:20 59:8,10,15 59:24 60:3,7,15,23 61:5,6,14,17 62:1 62:4 64:7 65:1 66:8,17 67:23 68:18,24 69:1,15 70:1,12,15 71:3,11 72:3 73:5,25 74:1 74:5,24 75:2,19 76:13,16,21 77:14 78:5,14,16,17,18 78:19 79:1,10,15 79:17,19,21,23 80:3,8,10,15,20 81:2,3,4,6,9,19 82:2,5,13,18,19,21 82:24 83:2,7,21 84:1,2,4,8,11,12 84:14,16,17,18 85:3,7,15,22,24 86:1,8,11,20 87:8 87:11,15,23 88:3,7 88:10 89:5,9,18,25 90:16 91:16 92:7 92:17 93:4,23 94:2 95:17,20,21 95:22,25 96:2,3,5 court's 7:5 9:18 11:4 21:13 23:7 43:20 52:5 60:12 74:18 75:9 77:20 90:4 courts 6:3 80:25 88:18 created 47:20 creating 75:17 cries 91:21 92:11 crisis 19:13 53:8 critical 8:17 9:13 10:2 11:5 22:20
--	--	--	---

78:23 critically 95:14 curious 73:11 current 5:14 85:2 cut 69:19	denied 56:4 deny 58:24 denying 36:7 depending 16:9 depends 55:23 deplete 53:8 deprives 4:9 described 35:23 deserve 90:5 designated 33:21 designed 36:1 37:7 43:5 desire 38:10,22 development 7:9 90:17 devote 17:17 dial 72:19 difference 16:8 19:20 25:8 28:24 28:25 36:8 95:15 different 5:5 7:10 8:4,22 9:13 11:22 15:8,8 19:17,23 20:19 24:16,24 28:10 34:16 35:11 44:14,23 63:8,16 66:25 73:10,21 75:2,20 88:9,20 95:2 differently 19:25 diminution 69:16 direct 52:5 direction 20:19 directly 4:17 21:5 43:21 58:15,18 disabled 94:5 disagrees 86:20 discreet 89:12 discrete 89:11 discriminate 61:12	discrimination 62:10 discuss 11:4 discussed 21:12 discussion 45:13 93:17 dismiss 90:11 dismissal 43:9 89:24 dismissed 42:5 85:9 dismissing 60:3 displaced 78:4 displacement 52:21,22 dispositive 94:23 disregarding 51:21,23 52:4 dissent 13:6 37:18 37:20,21,23 76:5,8 89:7 dissenters 23:3 distinction 62:5 78:23 79:15 85:6 distinctions 62:8 distinguish 45:14 distinguishable 76:2 distinguished 21:14 distinguishes 47:23 distinguishing 19:19 district 41:25 60:3 70:15 84:12 90:16 doing 20:5 21:1 40:3 65:19 66:18 doubt 8:23 doubtful 66:21	draconian 78:13 dramatic 37:18 45:1 72:12 dramatically 44:23 draw 77:19 78:24 drawing 61:21 62:23 drawn 62:12 85:5 draws 79:14 driven 58:18 due 60:1 77:1,4 82:9
d			e
d 3:1 97:1 date 25:2 98:11 dated 47:11 day 8:13 days 8:14 de 28:17 33:7 70:24 deal 30:10 62:15 87:19 90:20 dealing 20:1 28:11 dealt 62:13 decide 6:11 58:21 decision 7:5 9:19 11:4 23:12 47:24 decisions 6:23 21:13 22:23,25 23:7,15,15 51:19 52:4 60:17 declaration 12:12 13:3 15:25 declarative 14:15 declaratory 79:24 declare 12:24 declared 90:21 declaring 79:25 decontrol 72:16 decretal 15:20 defendants 34:5 defense 40:11 77:5 degree 73:4 deliberate 65:21 demolish 79:4 demolishing 12:14 demonstrates 5:25			e 3:1,1 97:1,3 98:1 early 70:18 72:14 easier 19:16 economic 45:10 47:19 68:17 69:3 69:20 71:25 72:4 effect 47:10 89:20 effects 59:25 83:5 effort 47:3 either 27:1,16 36:23 50:13 63:4 90:17 elaborate 16:18 elements 26:5,9 30:10 eliminate 50:5 else's 82:6 embedded 33:14 emphasize 29:15 emphasized 20:18 48:8 employment 7:12 enabling 59:21 enact 16:6 80:24 80:24 87:19 ends 5:3

<p>endure 38:2 enforcement 37:5 83:10 enforcing 14:15 engaged 18:2 enjoin 56:25 77:14 78:5 83:10 enjoined 57:23 enjoyment 4:23 enter 38:9,13,20 47:25 55:25 70:6 entering 65:22 enters 44:4,15 45:5 enthusiasm 26:18 entire 24:25 46:7 85:8 entirely 34:6 50:2 54:24 87:23,23 entirety 43:4 54:3 57:2,12 77:15 85:16 entitled 86:18 87:2 erase 8:10 error 94:21 essentially 16:11 19:22 20:4 35:16 57:5 establish 25:11 48:14 established 7:21 esther 43:1 europe 88:10,19 european 91:18 event 25:18 40:13 46:25 everybody 95:8 96:1 evict 95:1 eviction 63:8</p>	<p>exactly 4:25 12:1 26:16 31:18 50:25 57:8 64:16 71:9 example 6:24 26:20 30:6 32:15 33:6 36:18 38:23 39:6 61:18 93:3 examples 61:6 exception 18:4 93:20 exceptions 4:12 exchange 74:17 75:1 76:1 exclude 4:10,16,19 4:24 8:12 24:22 27:25 29:7 31:25 33:9 36:16 48:8 48:10,13,17 49:2,5 49:9,14,18 excluding 49:4 64:11 exclusion 28:10 63:4 64:9 exclusively 5:10 excuse 25:4 69:1 exemptions 29:22 30:4,12 exercise 27:24,25 29:6 31:25 33:9 36:16 47:3 55:11 56:3 81:10 exercising 4:16 exigent 17:9 exist 29:14 existed 5:13 18:23 25:1 92:22 existence 29:13 exit 38:10,22 39:2 44:9 45:13,14,15 45:18,18,21 46:3,5 46:17,22 47:3</p>	<p>49:22 50:2 55:10 55:12,25 56:1,3 75:21,23 95:11 expectation 70:7 72:2 expectations 68:6 69:5 72:24 89:17 expected 71:6 expectorations 72:8 expensive 28:9 expires 4:3 explain 75:4 explained 64:2 85:4 explains 76:13 expressed 26:16 26:18 extended 7:15 extent 14:2,4 16:3 45:20 53:7 66:9 70:2 83:5</p>	<p>89:19 94:13 95:9 factor 68:17 69:8 69:12 89:22 factors 69:13 76:18 factual 31:24 fail 28:5 43:16 fair 69:7 fairly 76:23 86:16 fairness 76:17 fall 29:20 families 58:17 family 65:17,21 78:3 family's 28:15 far 9:6 48:15 67:19 71:14 73:19 75:17 76:12 88:12 farm 20:1 farmers 7:11 fashion 3:4 favor 24:17 58:21 90:14 features 35:19 56:9 february 1:3,15 federal 3:25 fend 77:25 fifth 30:8 financial 71:4 find 21:25 22:1,10 29:22 51:13 86:21 finds 56:4 finish 88:5 first 3:6,10 5:17 6:22 10:9 16:12 20:8 31:23 33:2 34:1 73:13 74:15 76:16 92:5 fits 93:20</p>
		f	
		<p>f 98:1 face 11:11,23 27:16 34:22,25 46:4,17 55:9 91:11,24 facial 14:11 16:10 16:12,14,19,21 17:1,2,6 25:4,15 26:18 30:17 33:2 33:4 39:24 43:15 46:18 49:11 53:16 53:20,20 55:16 80:1 82:19,20,22 82:25 facially 15:5 25:12 50:13 90:13 fact 6:15 10:24 11:15 28:22 75:6</p>	

<p>fix 91:22 flag 61:20 flexible 24:5 focus 5:10 17:11 34:2 60:6 81:14 focused 36:17 focusing 14:18 17:13 83:24 85:1 86:23 folks 78:3 follow 22:7 63:12 follows 4:17 footnote 74:18,21 76:3 79:6,11 forbidden 49:5 force 9:7 79:1 91:8 forced 38:9,13,14 38:20 65:7 forces 4:6 forcing 79:11 foreclosed 43:8 forecloses 46:18 foregoing 98:3 foreshadowed 91:20 forever 19:12 44:5 form 70:19 forth 49:16 73:6 73:14 77:18 92:2 fortunate 95:23 foster 37:7 fostering 59:21 found 68:19 foundation 26:22 four 1:9 2:4 3:6,13 24:9 67:25 74:18 97:7,12 fourth 17:2,2,2 94:11 fraction 54:17,21</p>	<p>framework 67:21 free 37:8,9 57:21 friendly 70:24 friends 78:22 85:4 full 36:14 fully 91:9 fundamental 20:9 32:6 43:17 50:17 51:5 92:19 93:2 further 51:9 future 39:19 59:1</p> <hr/> <p style="text-align: center;">g</p> <p>g 3:1 95:6 97:3 game 44:16 gather 3:8 gauntlet 47:3 generally 81:23 94:3 generous 8:6 54:17 getting 13:16 28:22 41:19,21 give 13:19 18:20 21:2 49:1,21 50:4 50:10 52:14 80:16 86:13,14 given 59:7 68:6 71:5 80:19 81:15 gives 34:8 giving 50:7 90:6 glove 93:20 go 3:10 6:17 16:5 17:22 19:11 20:19 23:19 24:15 33:8 34:10,19 36:2,4 49:9 51:9 76:11 78:7 79:16 90:16 93:4 goes 25:17 66:1 67:18 84:19 86:4 88:12</p>	<p>going 6:15 9:6 13:8,24 14:9 20:16 21:2 22:3,3 50:24 53:15 64:8 64:17 71:17 72:20 73:6,19 75:17 91:13 good 3:20 6:9 21:25 24:3 42:25 73:25 74:8 86:8,9 86:12 92:23 govern 24:14 government 4:18 7:25 11:19 18:18 18:19 76:24 90:22 91:4 grabs 77:23 grant 4:6 granted 42:1 grapple 80:21 gravamen 91:7 grave 10:23 great 10:21 28:23 28:25 48:12,13 49:4 90:20 greatly 53:8 group 16:23,24 89:12 growers 33:16 guess 6:20 20:6 21:24 27:4 29:15 68:16 69:11 81:18 81:20 88:6,24 guest 34:11 guideline 80:25</p> <hr/> <p style="text-align: center;">h</p> <p>half 59:19 halligan 74:8,10 79:7 80:17 87:17 94:21 97:10</p>	<p>hallmark 43:24 hammer 92:16 hand 36:8 61:15 88:13 93:20 hands 55:13 happen 50:22 53:4 57:19 58:13 72:5 87:24 90:15 happened 10:19 27:6,11,13,15,18 27:21 51:7 71:6 happens 5:2,3 33:21 57:17 happy 45:2 64:11 78:15 hard 25:22 53:5 69:19 hardship 29:22 30:1,12 hardships 30:4 harmon 6:24 harms 52:20 53:1 53:10 59:7 heading 88:14 hear 3:12,14 24:1 42:23 59:12 71:11 71:11,12 74:7 heard 3:4 24:24 25:9 58:14 61:22 71:12,13,15 74:12 hearing 58:15 heart 24:11 37:24 61:7,17 heightened 55:16 held 4:18 22:22 47:24 49:8 84:12 hencely 11:25 highest 36:25 highlight 60:18 highway 50:23</p>
--	---	---	--

<p>history 35:24 36:21 71:21</p> <p>hoc 56:8</p> <p>hold 43:21 59:25</p> <p>holding 21:16 47:16 52:5 88:21</p> <p>home 11:8 89:12</p> <p>homeless 74:12</p> <p>homelessness 52:21 53:8</p> <p>honestly 35:9</p> <p>honesty 22:4,12</p> <p>honor 3:22 5:9 10:16 19:18 21:7 22:19 24:7 25:8 25:13,25 26:21 27:5,22 28:13 29:24 30:3,19 31:22 33:3,24 35:20 36:13 37:19 37:22 39:5,17 40:6 42:3,13 44:8 45:3 47:14 51:15 53:18 55:8 56:12 58:5,8 59:3,9,14 63:2 64:17 65:14 68:12 70:21 74:4 74:9 78:21 80:2 81:18 82:7,17 83:19 85:18 86:17 88:24 92:5</p> <p>honors 24:3,8,20 90:2 95:19</p> <p>hope 29:25 53:15</p> <p>horn 33:12</p> <p>horne 23:12 33:17 33:17 40:8</p> <p>host 53:1,1</p> <p>hours 8:13</p> <p>housing 1:3 2:2 3:5,11 43:6,23</p>	<p>52:18 81:7 97:6 97:11</p> <p>huh 73:25</p> <p>hundred 8:14</p> <p>hypothesized 87:18</p> <hr/> <p style="text-align: center;">i</p> <hr/> <p>idea 63:23 72:11 72:25</p> <p>identity 61:3 63:22</p> <p>ignore 21:3</p> <p>illegal 18:3</p> <p>illusory 46:22 55:13</p> <p>immediately 27:20</p> <p>immunity 43:12</p> <p>impact 68:17 69:3 69:10,15,20 77:11</p> <p>impacts 71:4,7</p> <p>impermissible 86:25 87:1</p> <p>implicit 51:16</p> <p>implies 33:1</p> <p>importance 48:8</p> <p>important 8:21 27:4 52:22 90:5 95:15</p> <p>imposes 87:7</p> <p>impositions 87:6</p> <p>impossible 31:24</p> <p>improper 57:14</p> <p>improperly 63:5</p> <p>improved 92:1</p> <p>improvement 1:3 3:5 69:23</p> <p>improvements 68:4</p> <p>inability 57:7 63:24 64:23</p>	<p>incapacity 5:6</p> <p>include 58:11</p> <p>includes 5:14</p> <p>including 51:7 52:21 73:1 77:7 82:8</p> <p>inconsistent 83:17</p> <p>incorporate 72:25</p> <p>increase 70:25</p> <p>increases 59:20</p> <p>incumbent 18:2</p> <p>indicated 21:18 57:19</p> <p>indicates 79:14</p> <p>indication 13:20</p> <p>indications 60:14</p> <p>indiscernible 5:16 5:19 6:6 8:18 9:23 10:13 12:19,22 13:9,10 14:7 15:15 16:2 17:20 17:21 18:9,21,22 19:3,6 20:12 21:23 23:21 27:8 28:6 31:13 35:4 37:9 38:17 39:14 47:9 58:20 62:11 62:15,24 66:14,17 71:14 79:20,23 80:3,8 81:4,5,7,8 81:19 82:4,24 84:8,10,11,13 85:25 86:8 88:2 95:24</p> <p>individual 18:13 18:17</p> <p>indulgence 90:4</p> <p>ineligible 29:4</p> <p>initial 31:5</p> <p>injunction 58:10</p>	<p>injunctive 14:15 79:24</p> <p>injury 55:23</p> <p>innovations 72:18</p> <p>inquiry 76:22</p> <p>insofar 33:1</p> <p>intend 39:19</p> <p>intended 52:14</p> <p>intent 39:11</p> <p>intention 38:10</p> <p>interest 76:24</p> <p>interested 33:1 41:4 93:9 94:3,12</p> <p>interesting 7:9 37:12 95:22</p> <p>interference 4:19</p> <p>interpreted 51:4</p> <p>interrupt 83:8</p> <p>interrupting 88:4</p> <p>intervene 87:19</p> <p>intervenor 2:9 3:15</p> <p>intervenor's 77:19</p> <p>intervenor's 74:7 74:11 97:10</p> <p>intrusion 8:12</p> <p>invalidate 43:3 89:21</p> <p>invalidity 26:19 33:2</p> <p>invasion 11:20 61:1</p> <p>investing 33:8</p> <p>investment 69:5 89:16</p> <p>invitation 34:2</p> <p>invite 34:3,7</p> <p>involving 9:21 11:7</p> <p>irrelevant 16:24 16:25 30:15</p>
---	--	--	--

<p>island 32:17 issue 9:6 60:9,10 60:10,23 75:7 76:10 issues 90:5 iterations 35:8 i'll 68:13</p>	<p>kinds 67:3 king 2:4 3:12,17 24:2,3,4,6,8 25:7 25:13,25 26:21 27:10,22 28:7,13 29:2,24 30:1,3,19 31:12,21 32:6,13 32:20,23 33:3,24 34:10,23 35:4,7,20 36:1,13 37:11,19 37:22 38:4,12,17 38:23 39:1,4,17 40:6,20 41:1,3,8 41:17 42:3,7,12,19 42:20 57:19 73:11 90:1,2 92:5,9 93:25 94:9 95:19 97:7,12</p>	<p>landlord 5:7 11:1 13:24 29:11 31:16 43:22 45:4,8,9 46:5,7,10 47:17,20 48:19,21 49:18,25 51:2 52:25 54:5,8 55:21,23,24,25 56:2,6,8 57:15,20 57:23,24 58:3,9 59:7 61:1 63:13 70:24 75:20</p>	<p>92:24 93:2 94:25 lawful 87:19 laws 51:9 78:6 83:11 lawyer 21:25 51:25 lawyers 86:3,9,12 lays 16:22 lead 87:17 lease 4:3,14 9:16 10:10 17:17,23,24 18:1,2 19:2 29:9 34:4 49:15,21 50:7,8,10 57:16,21 58:4,7,12 60:20 61:23 63:5 65:8 87:1</p>
j			
<p>j 83:9 job 22:4,9,11 joint 41:4 judge 16:18 22:4 24:14 29:17 30:25 32:25 33:13 66:24 74:16 75:25 76:4 77:11 79:16 89:6 90:9 91:16 93:5 judgment 60:2 68:11 90:17 june 57:17 jurisprudence 85:3 justice 6:18 13:5 17:10 20:17 21:22 36:22 37:17 76:6 76:17 justifies 86:5</p>	<p>know 7:10 8:1 10:7 16:12 22:12 22:12,17 25:14 26:5,7,12 28:4,21 32:11 33:4,12 35:7,9 36:4 40:23 41:11 46:21 48:11 57:16 65:9,20 67:10,20 68:5,8 69:14 72:10,13,21 73:9 88:8 90:10 91:24 92:11,15 93:1,16,21 94:17</p>	<p>landlord's 72:24 landlords 37:14 43:18 53:2,5 54:25 landowner's 48:9 48:13 language 54:12 70:8 languages 16:13 large 54:16,21 largely 43:8 law 3:25 5:11,12 5:13,14 7:4 11:16 14:16,24 15:3,4 16:23,25 17:12 19:1,11 21:3,9 22:5,12,13 23:19 27:19 34:7,24 37:3 44:5 46:4 47:11,16 48:12 50:12,25 52:12,14 52:17 53:7,21 54:2,7 55:9 57:1,6 57:12,17,23 58:11 58:16,23 59:18 60:14 63:4,8 67:3 70:19 71:21 75:7 75:8,10 79:25 80:24,25 87:19 91:11,25 92:11,21</p>	<p>leases 30:18,20,24 31:12 38:15 48:23 49:19 50:4 60:10 leasing 33:23 leave 10:1 40:17 58:1 64:20 83:6 left 77:24 legal 30:17 83:3 legislative 36:21 71:23 91:22 legislature 16:4,5 36:3 52:23 58:14 71:24 72:5,19,21 80:24 87:18 88:11 88:15,22 89:1 legislatures 89:2 legitimate 25:19 25:20,24 26:14 27:3 53:25 54:3 76:24 lever 92:3 life 59:19 likewise 30:9</p>
k			
<p>kaitlyn 74:10 kaycee 54:12,17 55:4 keep 13:8 14:9 39:11,11 79:2 keeping 86:24 kevin 24:8 kick 95:7 kind 8:6 57:13 68:3 69:8 70:7 71:7 88:20 94:3</p>	<p>knowing 31:17 knowledge 73:16 knows 87:24</p>		
l			
<p>labor 7:14 8:1 lack 26:18 28:10 laid 77:16 land 11:23 50:22 76:9 95:2</p>			

<p>limit 45:24 67:1,8 67:17</p> <p>limitation 23:10 28:23 34:6 67:10 67:18 83:14</p> <p>limitations 16:4 44:5 61:24</p> <p>limited 4:11 8:13 28:22 32:9 34:18 41:22 66:4 81:12 86:21</p> <p>limits 31:14,17 33:20 34:20 81:1</p> <p>line 61:21 62:12 62:14,23,23 94:11</p> <p>lingell 76:14,21,21</p> <p>literally 93:13</p> <p>litigants 77:4</p> <p>litigated 56:14</p> <p>little 14:9 24:23 25:22 71:18</p> <p>live 34:10 94:13,17</p> <p>living 94:5,12</p> <p>located 41:11</p> <p>logic 67:6</p> <p>long 8:7,8 26:10 32:17 70:4</p> <p>longer 14:19 27:24 27:24 32:3 33:14 49:10</p> <p>look 7:3 22:4,11 22:22 23:14,19 36:2,20,22 41:13 54:25 56:23 66:11 66:19 88:11 91:16</p> <p>looked 22:5 69:4 77:13</p> <p>looking 54:14 57:5 69:2</p> <p>looks 57:9</p>	<p>loosening 18:23</p> <p>looser 10:22</p> <p>los 17:5</p> <p>lose 88:21</p> <p>losing 28:24</p> <p>lost 68:15</p> <p>lot 36:7 45:12 52:10 56:17 88:4</p> <p>lots 91:18</p> <p>lower 84:18</p> <tr> <td data-bbox="537 632 857 684" style="text-align: center;">m</td> </tr> <p>m 97:3</p> <p>magnitude 69:15</p> <p>main 51:22</p> <p>mainstay 59:19</p> <p>major 69:22</p> <p>making 25:3,4 39:24 44:14 60:20 62:5,5,15 93:19</p> <p>mall 48:1,2</p> <p>malls 47:25</p> <p>management 75:13</p> <p>mandates 29:12</p> <p>maneuvers 92:16</p> <p>march 98:11</p> <p>maria 39:6 40:22 93:9</p> <p>market 1:23 12:14 37:8,9 38:10,11,13 38:22 39:3,3,23 43:6,19 44:4,9,16 44:20 45:5,9,15,19 46:4 47:4 49:22 50:2,5 55:10,25 64:23 79:2,9 81:7 83:6 86:24 95:12</p> <p>matter 4:12 16:16 16:25 31:24 80:1</p> <p>matters 32:14 73:3</p>	m	<p>mean 7:9 10:6,18 15:1 18:25 19:11 27:19 28:4,8,21 32:15 35:15 36:11 41:21 42:11 44:14 65:15 69:8 70:9 71:10,20 77:17 84:6,22 91:17</p> <p>meaning 66:20</p> <p>means 31:5 57:22</p> <p>meat 71:18,19</p> <p>mechanism 30:5,9</p> <p>mechanisms 33:5</p> <p>meets 16:16</p> <p>member 65:18,22</p> <p>mentioned 69:22 79:16</p> <p>merck 89:19</p> <p>merits 52:9 92:14</p> <p>met 25:11 55:6</p> <p>metropolitan 37:3</p> <p>mid 70:18</p> <p>million 13:11 30:18,19 59:23 77:21,24</p> <p>millions 93:18</p> <p>minor 27:7</p> <p>minutes 42:21 78:20</p> <p>miserable 86:3</p> <p>misreading 64:14</p> <p>mobile 11:8</p> <p>model 7:20</p> <p>modifications 26:15</p> <p>modified 92:2</p> <p>moment 72:6</p> <p>money 30:13</p> <p>month 30:14</p> <p>months 11:18 95:1 95:7</p>	<p>morjakava 42:25 43:1 44:8,12 45:2 47:14 48:16 49:13 51:15,21,23 52:2 53:18 54:16 55:7 55:22 56:11 57:8 57:18 58:5,8 59:3 59:9 97:8</p> <p>morning 3:3 24:3 42:25 74:8 96:4</p> <p>motel 61:7,17</p> <p>motion 90:10</p> <p>move 39:7 42:23 43:13 68:11 74:2 93:23,25</p> <p>moving 20:19 41:5 65:23</p> <p>multi 69:12</p> <p>multiple 4:1 46:8 64:3</p> <p>murdakava 77:13 80:18</p> <p>murtakava 78:2</p> <tr> <td data-bbox="1177 1167 1497 1220" style="text-align: center;">n</td> </tr> <p>n 3:1 97:1,3 98:1</p> <p>narrow 10:10 14:21 20:1,9</p> <p>narrower 59:1 85:21</p> <p>national 1:23</p> <p>nature 10:7 16:19 52:11 54:19 55:23</p> <p>near 69:15</p> <p>nearly 77:21</p> <p>necessarily 52:13</p> <p>necessity 18:11</p> <p>need 24:15 28:4 92:10</p> <p>needs 25:11</p> <p>negotiate 30:21 57:21</p>	n
m					
n					

<p>neighborhood 59:22 neighbors 74:11 neither 11:12 never 6:4,4 44:6 48:18,19,19 new 1:6,12 3:5,7 24:15 31:17 36:24 43:5 48:9,12 50:24 52:11 54:6 56:9,10 58:4,17 59:19 67:1 68:1 74:11 75:8 80:23 80:24,25 81:7 87:18,20,22,25 89:9 nice 28:9 non 31:14,18 79:4 normal 27:1 nos 1:5 3:4 notable 49:23 note 60:22 69:25 noted 65:16 68:18 70:16,21 notice 85:10 95:1 95:7 noticed 71:22 noting 56:18 notion 9:1,10 22:25 23:8 31:1 50:18 51:6 number 9:5 13:12 32:9 34:16 40:20 41:14 46:5 50:20 55:8,10 62:14 66:18 78:1,7 88:13 numbers 93:18 numerous 51:18 56:1</p>	<p style="text-align: center;">o</p> <p>o 3:1 98:1 object 56:19 objection 4:9 11:24 38:15 50:7 50:9 63:13 64:21 93:22 objections 49:15 obligated 22:21 23:14 58:3 76:3 obligation 4:12 12:12,16 23:19 64:22 obligations 13:15 obviously 86:20 occupation 4:8 7:1 23:2 31:3,6 43:25 47:21 94:18 occupations 30:11 occupied 18:5 93:11 occupy 26:7 40:16 46:5 occurred 7:10 44:22 occurs 7:6 offer 12:16 49:19 65:8 offered 48:6,21 offering 26:6 offers 43:23 oh 18:22 35:25 51:25 64:7 66:15 okay 20:10 26:4 44:3,7 53:13 87:15 89:5 90:1 once 11:13 49:1 61:1 one's 32:12 ones 13:15 35:5 71:5</p>	<p>opened 31:2 63:23 opening 31:18 45:1 opens 47:20 48:2 opinion 15:20 opponents 57:4 opposing 51:24 opposite 21:10 ops 46:11 option 41:12 75:23 88:1 options 66:6 oral 1:14 71:15 order 25:11 26:17 36:4 49:8 52:25 orderly 3:9 organizers 7:14 8:1 original 50:18 66:19 70:22 originally 41:25 outright 46:8 outside 24:16 54:22 outsider 9:8 outsiders 9:4 62:6 overlapping 39:13 overlooked 34:5 owner 4:4,6,9,14 11:13,16,24 12:13 13:18 14:2 17:8 17:15,22 18:5,20 19:1,2 23:8 29:4 30:8 36:18 40:9 47:2 72:9 79:12 82:12 83:5 90:24 91:5,6 93:21 95:7 owner's 4:9,24 owners 7:13,18 9:14 17:16 24:21 26:6 27:23 28:14</p>	<p>30:7,20,23 31:2,9 32:2 33:5 34:3 36:15 38:2 79:1 87:7 89:13 91:12 94:25 ownership 81:11</p> <p style="text-align: center;">p</p> <p>p 3:1 pa 1:24 pads 11:8 page 76:20 77:19 93:10 97:5 pages 41:3 56:24 57:10 paid 89:11 palazollo 89:18 pamela 98:3,6 panel 1:17 52:6 pantagulous 32:16 38:24 39:7 41:24 93:7,9,14 95:9 pantagulous's 65:2 paragraph 15:20 94:11 park 50:23 parker 77:11 90:9 93:5 part 5:7,24 38:19 58:23 67:2 72:8 participant 45:8 participation 45:11 particular 52:15 52:16 55:1 56:9 56:18,21 66:3 67:17,18 75:10 83:15 93:15 94:7 94:16</p>
--	---	---	---

<p>parties 4:24 7:13 7:19,24 8:19 28:11 31:4 48:18 62:13</p> <p>partly 66:9</p> <p>party 9:8 43:23 47:21 48:22 52:15 52:16 90:25 95:4 97:5</p> <p>passed 44:5</p> <p>passing 36:3</p> <p>patagulous 39:5</p> <p>patel 54:12,23,24</p> <p>patell 16:20</p> <p>paths 56:1,3</p> <p>pay 37:14,16 50:4 50:5,21 51:1,2 63:12</p> <p>paying 88:1</p> <p>penn 68:9 69:4 70:8 71:7 76:18</p> <p>people 7:22 8:23 9:25 14:22 36:3 47:25 50:21,21 62:6,13 70:6,10 71:5 77:24 86:2 93:18</p> <p>percent 13:22 66:22 68:2,16,20 69:9 77:22 78:2</p> <p>perfectly 64:11</p> <p>period 7:15</p> <p>permanent 7:1 23:2</p> <p>permissible 17:6</p> <p>permit 63:4</p> <p>perpetuity 11:25 75:21</p> <p>person 34:8 44:6 44:17</p>	<p>personal 32:10,12 34:17 36:10,11,14 46:14 65:3 67:11 67:11 73:7</p> <p>perspective 27:5 90:12</p> <p>ph 7:5 16:20 26:23 27:1 32:16 42:24 43:1 47:23 54:12 59:13 76:14 89:18 89:19</p> <p>philadelphia 1:24</p> <p>physical 4:2,10,13 4:20,22 5:15,24 6:25 7:6 8:8 9:13 11:8,19 12:10 13:2 15:3,9,11 17:14 18:16 19:21 21:13,14,16,19 23:1,12 24:10 27:17 30:4,11,15 37:25 38:6 42:16 43:14,22,24,25 44:18 45:5,11,17 46:2,18 47:18 48:1,4 50:13 60:5 60:21,25 61:4,19 62:2 63:18,20 64:25 66:1 67:4 67:22 73:10 74:16 75:17 78:25 79:8 79:13 80:6 82:1 82:11 83:4,11 85:1 86:22 90:22 91:2,8 92:15 93:6</p> <p>physically 93:11</p> <p>piecemeal 85:11</p> <p>pieces 68:13</p> <p>pincus 2:3 3:10,16 3:21,22 5:9,22 6:5 6:7,20 7:8,8 8:11</p>	<p>8:16 9:12,24 10:2 10:5,9,13,16 11:3 12:4,8,10,18,19,20 13:1,13,22 14:5,6 14:7,8,13 15:7,15 15:18,21,24 16:3 16:17 17:21 18:1 18:9,11,15,25 19:4 19:7,18 20:3,6,11 20:13,21,24 21:4,7 21:22 22:19 23:22 23:24,25 24:13 25:14 27:13 29:8 35:1 48:24 74:17 75:1 76:2 78:19 78:21 79:19,20 80:2,5,9,12,19,22 81:5,18,20 82:4,7 82:16,23 83:1,3,7 83:19 84:1,6,9,12 84:23 85:14,18,25 86:6,10,17 87:10 87:13,16,25 88:3,6 88:24 89:6 90:1 91:20 92:24 97:6 97:11</p> <p>pincus's 35:11</p> <p>pinehurst 1:9 2:4 3:7,13 24:9 43:13 49:24 56:25 67:25 97:7,12</p> <p>pinnel 76:5 89:7</p> <p>place 25:23 26:1,2 26:9 30:18 52:15 67:22</p> <p>placed 48:12</p> <p>plainly 25:19,19 25:24 26:14 27:2 53:25 54:3</p> <p>plaintiff 13:4</p>	<p>plaintiffs 29:16 32:16 38:9,24 39:5 49:20,25 55:11 60:2,19 61:21 63:24 64:19 65:16 67:7 69:23 70:16 73:1 91:15 93:7,14 95:10</p> <p>plan 3:9</p> <p>platin 59:12,14,16 62:2 63:1 64:16 65:1,13 66:15,23 68:12,25 69:11 70:11,14 71:9,16 72:7 73:15 74:1,3 97:9</p> <p>plausible 65:12 68:10 85:20 95:16</p> <p>plausibly 3:24 15:4</p> <p>play 75:18</p> <p>pleading 25:16</p> <p>please 3:23 43:1 59:15 96:3</p> <p>point 4:18,21 5:25 6:1,23,25 7:2,4,4,9 8:5,10,11,20,20,24 8:25 9:7,17 10:3 11:5 13:4 15:1 21:6,12 22:22 23:4,20 24:14 27:4 32:21 35:13 38:1 39:20 47:9 47:10,13,15,22,23 48:7,14,17 49:3,10 60:14,16,18 61:17 61:20 62:5 66:2 69:12 74:17,20 75:25 76:6 77:21 86:25 87:2 89:15 91:9,17 92:14</p>
---	---	---	---

<p>94:15,20,20 95:5 pointed 34:14 64:18 94:15 points 33:25 60:4 74:13 75:5 77:13 89:4 90:3 policy 37:5,8 political 72:4 poor 37:15 51:1 populations 89:11 position 5:22 33:2 53:19 54:24 55:4 55:8 positions 15:6 possession 33:18 possibility 56:5 possibly 18:7 49:19 practical 91:23 prayer 77:13 81:22,24 83:8,20 85:23 prayers 57:10 pre 6:25 precedent 21:8 26:24 43:8 precedents 43:21 precise 13:3 79:15 predated 21:11 preferential 72:15 premises 26:8 presence 68:6 present 54:7,8 presentation 3:9 presented 11:22 80:18 presently 38:10,21 preserve 52:25 preserved 42:15 42:21</p>	<p>press 42:16 pressed 53:6 pressing 83:22 presumably 16:4 pretty 21:18 65:21 prevail 30:16 83:21 prevent 53:1 prevented 4:15 40:2,3 preventing 79:12 prevents 14:4 53:7 83:5 previous 6:2 35:3 35:5 62:8,22 84:20 previously 10:17 34:15 73:23 primarily 61:10 principle 23:16 61:7 prior 5:13 6:23 21:13 22:22,25 23:7,15 25:1 33:6 35:8 37:4,6 51:18 52:3 priority 48:9 private 83:12 probing 77:2 problem 21:24,24 30:2 61:22 76:10 91:23 problems 88:14 92:24 procedures 91:18 proceed 78:11 proceeding 96:7 proceedings 90:18 96:4 98:4 process 60:1 77:1 77:5 82:9</p>	<p>program 1:3 prohibited 65:19 75:21 prohibition 23:9 prohibits 17:12 proper 13:5,6 properly 22:15 67:13,14,15 properties 7:20 69:17 property 4:4,4,15 5:8 7:14,18 8:2 9:14 11:13,14,16 11:18,24 12:13,13 13:25 14:2 17:8 17:15,16,17 18:5,6 19:1,5 23:12 26:6 32:3 33:21,22 36:16 38:1 40:10 40:16 47:20 48:2 48:22 53:9 61:2 62:20 63:21,23 64:1,4 65:10 66:3 67:2,9,18 68:20 83:12 87:7 89:13 95:8 protect 62:9 70:13 protected 70:8 protecting 59:20 protections 59:24 protective 35:24 provide 43:5 45:22 53:2 80:25 provided 25:17 75:12 provides 55:10 provision 31:7 49:16 61:13 75:10 92:18 provisions 16:6 28:17 33:7 45:24</p>	<p>49:15 50:8,12 56:18,21 58:12 59:6 67:9 70:24 72:16,23 77:7 prune 47:23 public 33:23 48:2 48:6 50:20 52:20 53:1 61:13 purchased 70:17 purchasing 71:20 purely 46:23 purported 94:22 purpose 51:12,13 purposes 12:15 79:3 pursuant 50:11,11 put 19:13 59:21 71:18,18 95:2</p>
q			
<p>qualification 83:13 question 5:17 16:21 27:12 33:1 33:14 36:6 38:6 38:19 49:1 51:16 51:24 52:9 68:24 71:18 74:23 75:1 76:5,25 89:16 90:8,11,15 93:5 94:14 questions 43:11 51:17 52:12 60:8 60:13 65:16 76:17 78:14 quick 90:3 quite 8:4 9:10 10:19 72:22 75:23 quote 4:22 11:11 74:22 quoting 75:13 93:9 94:10</p>			

r	reasonable 68:5 69:5 72:9	regulated 13:14 13:17 50:10 78:4	47:19,25 48:4 52:25 54:6
r 3:1 97:3 98:1	reasons 55:8 62:14 62:16 75:15 79:16	regulates 54:5	relaxed 14:10 53:14
raise 64:10	rebuttal 3:16 42:22 78:20 90:3 97:11,12	regulating 18:18 48:5	release 58:6
raised 49:15 89:7 92:24	recapture 19:4	regulation 4:23 7:13 9:24 13:18 23:9 37:7 44:18 45:9,15,21 46:18 47:19 53:3 55:1 70:3 72:17 76:10 76:22 89:20	released 19:16
raising 23:9,10 46:21	received 59:24	regulation's 77:2	releases 60:10
raisins 33:19	reclaim 28:15 30:7 46:14	regulations 47:17 47:24 48:3 50:11 54:8,18,19 70:4 76:11	relevant 9:17,18 9:19 17:14 45:18 47:16 54:13 70:3
ramp 14:18 29:23 94:23	recognized 69:16	regulators 7:25	relief 12:5 13:3 14:15 15:7,24 25:17 57:9,11,11 77:14 79:23,24 80:5,10,13 81:10 81:22,24 82:10 83:9,20,22,24 84:24,24 85:16,21 85:23 86:18,21 87:2,9,9,12,13
ramps 29:17 44:9 45:13,14,15,18,18 46:3,5,17,22 47:4 55:10,12 75:21 94:22	recognizing 60:12	regulatory 8:9 11:12 15:10 27:17 35:18 37:23 42:5 42:14 60:7 63:19 67:16,21,24 68:9 70:2 73:18,20 76:19 80:13 85:12 87:3 89:14,24 92:1	rely 43:21
range 36:14 77:8	record 78:2 90:17 98:4	reject 60:1	relying 21:15 95:3
rational 77:6	recover 65:3 68:4	rejected 7:2 23:5 23:11,17 37:8 40:11,11 59:25 61:14	remain 30:20
reach 75:2	recovery 29:4	rejecting 11:10 21:14	remains 79:8
reaching 35:2	reduced 68:1	rejection 37:4	remarkable 10:19 56:15
react 89:2	refer 6:24	related 43:12	remedy 55:21 56:22 57:13 58:9 58:22,24,25 76:11 90:8,18
read 6:14 51:6 52:1	reference 22:23	relates 9:14	removal 57:5 61:2
real 61:21	referenced 75:11	relation 9:2	remove 12:13 13:25 57:11 63:25
realistically 32:11 64:8	referred 79:7	relationship 7:12 7:22,25 8:7 29:12 29:13 45:10 47:17	removed 58:16 68:21 72:16
reality 80:19,21	referring 6:7 29:18 76:7		renew 4:5 10:10 17:17,23 30:24 31:10 38:15 60:20 61:23 75:14 87:1 93:22
really 8:5 10:19 11:5 16:15 21:12 22:5,9,17 25:16 26:22 32:13 34:1 41:2 43:16 45:21 48:5 49:17 50:5,9 54:10,17 56:13 57:22 58:13 63:22 65:17 66:13 67:17 73:21 77:2,5,10 82:14 84:22 87:4 90:11 91:7 94:14	refine 81:23		
reason 33:16 43:17 65:15 95:15	refrain 11:25		
	refuse 75:14		
	regain 18:7 32:2 36:15		
	regard 35:12 67:23 74:15,17 76:5,19 91:10		
	regime 12:24 14:14 25:23 26:1 35:17 56:10 68:7		
	regimes 92:1		
	regina 37:2		
	registers 68:16		
	regulate 29:10,11 52:24 90:23		

renewal 4:7,12 5:3 12:16 16:13 19:10 19:11 30:21 31:7 31:8,18 48:23 49:15 50:10 57:16 58:7,12 60:10 65:8 75:16 92:18 renewals 29:9 31:14 49:22 50:7 renewed 17:24 18:1 38:4 renovate 40:17 renovation 12:15 rent 3:25 6:8 9:24 10:1,8 11:24 13:12,14,15 14:16 14:24 15:2,4 18:20 19:9 30:14 32:17 45:14,21,23 48:12,22 50:12,25 52:11,19 53:7 54:2 57:1,6,24 59:18,20 63:12 64:10 67:2 68:7,7 70:18 71:21 78:4 78:6 79:25 83:10 90:23,24 91:5,8,9 93:8 rental 5:3 6:3 7:17 9:11,15 10:8,19 11:7,17 12:14 13:25 14:1 19:12 38:9,11,13,22 39:3 39:23 43:19 44:4 44:9,16,19 45:8,15 45:19,23 46:4 47:4 49:22 50:2 55:10,25 56:3 64:20 65:10 77:22 79:2,5,9 83:6 86:24 95:12	rented 11:13 renting 4:4,14 26:7 39:11,12 91:12 rents 39:15 50:5,6 64:23 70:25 72:15 repeated 71:22 reporting 1:23 represented 37:4 requested 85:17 require 7:23 40:9 51:18 52:3 required 7:1,13 11:19 13:11 16:10 23:1 33:18 49:21 69:4 76:9 requirement 60:9 60:20,24 61:12,23 requires 53:21 requiring 18:20 residence 28:16 residential 4:5,15 9:15 12:14 33:22 79:5,8 83:6 residents 59:23 respect 5:23 16:9 16:14,22 18:13,17 19:21 23:12 28:20 28:20 29:6 45:25 46:3 48:23 54:23 73:6 75:25 80:13 89:14 respects 47:12 72:13 respond 76:4 response 20:7 52:17,18 71:24 72:3,3,4 76:14 responses 6:20 31:21 40:7 56:20	rest 23:15 64:14 74:4 rested 22:25 restore 30:6 restricted 17:16 restriction 16:23 61:18 66:10 restrictions 10:20 10:25 39:9 65:6,8 66:25 67:4 68:1 75:22 result 13:16 29:20 41:8 75:2 resulting 52:19 results 45:10 retaking 67:11 return 71:17 reverse 84:9 review 53:16 77:6 85:9 revisiting 71:24 right 3:2,18,20 4:9 4:16,19,24 8:12 14:19 21:3 23:23 24:22,22 25:6 27:24,25 29:6 30:2,24 31:25 32:24 33:9 34:10 36:16 39:16 40:4 42:18,22 44:7,24 48:8,10,13,17,18 49:2,5,9,14,16,17 56:11,12 59:8 62:19 64:10 66:23 66:24 70:11 71:10 73:17 74:1,5 80:15 81:10 94:6 95:1,17 rightly 59:24 60:12 70:16	rights 61:8 75:16 rolled 72:13 roots 59:21 rsl 4:6,11,16,25 12:4 14:3 15:25 24:21,25 29:8 34:4 38:1 43:18 45:24 59:25 77:15 83:4 87:6 90:21 91:5 94:22 rule 19:1,1,8 24:16 53:20 90:14 rules 9:9 18:23 19:10 63:13 run 47:2
s			
s 3:1 98:6 satisfactory 63:12 satisfy 55:15 59:2 68:8 saved 86:15 saying 5:19 6:8,9 6:13 14:1,2,17 15:1 16:9,15 19:20,23 21:16 34:20,23 38:21 39:25 41:18,22 44:21,22 45:4,7 51:9,11 56:7 64:7 64:8 69:18,19 79:7 81:10 88:10 88:10 94:10 says 8:21,22 46:16 76:16,21 79:11 83:9 88:21 91:11 93:21 94:12 95:6 scalia 6:18 20:17 21:22 36:22 76:6 scalia's 37:17 scalpel 92:16			

<p>scheme 11:12 43:4 56:17 73:22</p> <p>score 35:1</p> <p>scrutiny 54:1 77:6 77:9</p> <p>se 63:18,20 89:21</p> <p>sea 35:17</p> <p>search 17:7</p> <p>searches 17:4</p> <p>second 1:1 30:7 38:18 51:19 67:11 69:2 90:21</p> <p>secondly 76:20</p> <p>section 75:11 95:5</p> <p>see 8:3 22:2,25 23:17 27:12 51:11 53:12</p> <p>seek 43:3 80:13 86:19 87:9,12,14</p> <p>seeking 12:5,11 15:8,25 52:23,24 56:16 80:6,11 84:23</p> <p>sell 40:10 46:7</p> <p>seller 46:8</p> <p>sense 24:24 48:9</p> <p>sensible 91:22</p> <p>serious 82:14,21 82:23</p> <p>service 48:5</p> <p>services 52:22</p> <p>set 3:2 27:2 56:16 77:18 93:2</p> <p>sets 70:3</p> <p>setting 51:18 52:3</p> <p>settled 43:8</p> <p>seventy 1:9 2:4 3:6 3:6,13 24:9 67:25 97:7,12</p> <p>severe 52:18</p>	<p>shaping 83:16</p> <p>she'd 93:25 94:17</p> <p>sheerly 81:2</p> <p>shelter 58:18</p> <p>shelters 78:3</p> <p>shift 32:6 93:2</p> <p>shopping 47:25 48:1,2</p> <p>shortage 52:18</p> <p>show 26:13</p> <p>showing 53:21</p> <p>shows 78:2</p> <p>side 37:13 71:13 78:22 85:5</p> <p>significant 61:5 65:25 68:4</p> <p>significantly 63:15</p> <p>similar 72:22 75:8 75:23 94:22</p> <p>simplifies 90:19</p> <p>simply 30:23 58:21 72:4</p> <p>situation 7:10,17 21:15,20 47:7 63:3,16 64:6 86:16 87:20</p> <p>situations 17:11</p> <p>six 11:18 32:17</p> <p>skaw 98:3,6</p> <p>sledge 92:16</p> <p>small 32:16 81:10</p> <p>social 76:10</p> <p>society 37:16</p> <p>solerno 27:1 53:20</p> <p>somebody 9:1,7 44:3,4,15 49:19 62:7</p> <p>someplace 6:16</p> <p>somewhat 44:14 85:21</p>	<p>sorry 10:16 82:18 83:2</p> <p>sort 44:6 50:23 69:19 72:1 73:6 77:9 92:15</p> <p>sorts 6:11 52:20</p> <p>sotomayor 17:10</p> <p>sought 29:22 58:10,22,24</p> <p>sound 3:18</p> <p>sounds 47:12</p> <p>sovereign 43:12</p> <p>speaker 3:19</p> <p>special 40:24</p> <p>specific 43:11 49:13 68:3 89:11 93:8,11,19</p> <p>specifically 11:21 20:17 21:13 54:21 77:18 89:10</p> <p>specified 75:14</p> <p>speculative 46:23 81:2 87:24</p> <p>spiking 52:19</p> <p>sponsors 35:22</p> <p>squarely 7:2 23:4 23:11,16</p> <p>squeeze 22:2</p> <p>stability 43:5 59:22</p> <p>stabilization 3:25 13:15 14:16,24 15:2,4 19:9 48:12 50:12 52:12 53:7 54:2 57:1,6 59:18 67:2 68:7 70:19 71:21 78:6 79:25 83:11</p> <p>stabilized 13:12 13:14 32:18 93:8 94:16</p>	<p>stake 64:14</p> <p>standard 25:10,16 53:15,24,25 54:1 54:14,17,18 55:5 55:16</p> <p>standards 54:21</p> <p>stands 96:5</p> <p>start 90:8</p> <p>state 1:12 2:6 3:7 3:14 11:12 37:13 42:24 43:1 46:1 50:13 56:21 65:11 75:6 97:8</p> <p>state's 36:25</p> <p>stated 90:12</p> <p>statement 37:18 45:1</p> <p>statements 84:19</p> <p>states 1:1 85:20</p> <p>status 30:17</p> <p>statute 11:22 17:3 25:12 30:5,10 35:8 37:6 46:18 59:6,6 64:3 70:22 75:12 95:6</p> <p>statutes 64:15</p> <p>statutory 43:4 56:17</p> <p>stay 9:3 14:22 20:22</p> <p>staying 64:22</p> <p>stock 77:22</p> <p>stop 4:4,14 9:14 11:16 74:3</p> <p>strangers 8:1</p> <p>street 1:23</p> <p>strict 77:6</p> <p>stricter 31:15</p> <p>strictures 67:8</p> <p>strike 81:13 88:12</p>
---	--	---	--

strikingly 75:8 stringent 70:5,5 70:22 strong 26:18 struck 6:4 subject 8:7 34:15 43:18 45:23 71:22 subsequent 43:20 73:1 subset 14:21 83:14 substantial 69:3,9 69:11,16 substantially 70:19 76:23 succession 49:16 successors 26:8 60:11 sufficient 46:24 suggest 44:2 78:7 suggested 75:1 76:1 suggesting 88:9,25 sui 8:6 54:17 suite 1:24 suits 60:3 summary 68:11 90:17 summer 26:23 super 34:7 supplemental 74:19 supplies 11:5 supported 46:23 supporting 51:13 supports 47:22 91:10 suppose 44:3 80:16 91:23 supposed 44:4 supreme 4:18 6:10 6:14 7:2,5 9:18	11:4 16:20 19:25 20:15,18 21:1,8 22:3,6,8,21 23:4 23:16 24:19 25:15 26:22 33:12 40:8 47:1 51:8,14 52:5 60:14,23 74:23 76:13 79:17 83:21 84:16,17 85:2 89:18 sure 69:7 survive 54:1 77:9 sweep 25:19,20,24 26:15 27:3 53:25 54:4 sweeping 35:23 37:3 swung 71:1 system 58:18	86:22 87:4 89:14 89:21,24 91:2,8 92:15 93:6 takins 24:10 50:18 talked 87:4 talking 12:11 13:2 15:11 18:12,16 30:11 31:8 32:22 33:20 47:11 60:24 63:9,11 70:2 71:8 talks 48:17 tall 26:17 targeted 82:12 89:10 92:11 taught 36:5 tax 13:16 tear 28:5 tell 40:5 telling 82:13 83:18 tenancies 38:2,4 tenancy 75:14,22 tenant 4:5 9:1 18:2 29:11 45:9 47:17 47:21 49:1,2,4 50:7 52:25 54:5,8 57:16,20,25 61:3 61:24,25 63:4,9,22 65:8 79:12 tenants 4:3,5,15 5:1 7:19 11:14 24:22 30:21 34:3 43:23 45:25 48:22 50:4 52:21 53:2 59:20 60:24 61:2 62:6,9,9,15,18,20 63:12,14,21,24,25 64:9,10 95:2,3 tender 58:4,6 tents 74:11 term 34:4	terminate 75:13 terminating 11:25 terms 31:8 34:2 68:9 test 25:20 27:1 69:12 testimony 58:14 thank 3:22 23:23 23:25 42:20,20 59:8,9,10,14 70:15 74:4,5 78:16,17,18 78:18,21 89:25 90:2 95:17,19,20 95:21 96:2 theoretically 56:8 theory 33:13 55:20 82:8 83:3 84:25 thing 5:19 6:9 27:23 37:13 73:10 81:12 88:8 90:15 91:3 things 5:15 6:3,11 11:1 20:7,22 36:4 36:15 40:20 41:14 41:25 56:18 63:1 66:18 73:14 76:14 81:14,16,21 think 5:12 7:3,6 8:11,16 9:12 11:5 20:9,21 21:2,4,7 22:20,20,24 23:6 23:14,17,18 32:24 33:11 36:5 42:22 47:15,22 48:16 49:23 51:15 52:3 52:6,10 53:5 54:16,23 55:13,22 56:15 57:18,19,22 60:12 61:5,21 63:7,15 64:16
	t		
	t 97:3 98:1,1 take 13:7 22:21 32:7,15 34:16 35:21 36:9,10,11 36:24 55:3,4,7 58:1 65:18 68:13 69:7 73:7 89:1 92:17 taken 49:1 50:22 66:21 88:9 93:11 takings 6:25 8:8 11:9 12:24 21:13 23:10,13 30:15 37:23,25 38:6 42:7,16 43:14 45:17 46:19 47:18 48:1,4 51:3,6,7 56:21 67:5,21,24 68:9,19 74:16 76:19 78:25 80:6 82:1,11 83:4		

<p>65:15,21,25 66:15 66:23 67:6 70:16 71:2 74:3,25 76:2 76:6 78:22 79:18 83:22 85:2,4,19,22 86:6,10,11,17 87:5 87:18 88:15 89:7 89:23 90:19 91:17 91:19,24 93:1 95:14 third 4:23 7:13,19 7:24 8:18 9:8 28:11 30:7 31:3 43:23 47:21 48:18 48:22 62:13 90:25 95:4 thought 8:23 40:25 94:2 thousands 58:17 58:17 70:18 three 8:13 42:21 74:13 throw 50:15,16 55:12 62:18,20 85:24 86:1,2 throwing 18:7 time 7:15 9:3 13:9 14:9,10 19:13 26:10 35:4 53:12 53:14 70:5,23 73:13 86:2 88:19 90:4 times 28:1 timing 8:21,22 9:6 24:5 today 5:14 18:24 35:10 53:4 59:23 told 20:16 totally 89:7 traditional 9:10</p>	<p>transcript 98:3 transfer 33:18 transfers 24:22 transition 37:7 trial 90:18 tried 29:22 tries 56:2 triggering 52:20 true 31:23 34:13 98:4 truly 44:9 57:23 try 21:24 47:2 55:11 58:25 trying 21:25 32:25 78:24 81:13 turn 68:14 77:10 79:4 tweak 27:7 tweaks 26:12 twelve 11:18 95:1 95:7 twenty 8:14 two 3:3 6:20 20:6 24:16,19 26:2 31:21 33:24,24 34:4 40:6 59:23 60:3 67:13 70:16 70:18 73:1 76:14 89:3,5 types 53:9 67:1 typically 56:14</p>	<p>25:12 26:13 34:21 34:24 53:22 80:1 87:21 unconstitutional... 58:23 88:15 undercut 51:12 understand 14:16 14:25 22:19 36:21 understanding 57:4 understood 67:3 underwent 70:23 undoes 74:20 unidentified 3:19 unique 54:6,19 unit 18:7 40:24,24 46:10,14 63:6 65:3,22 66:5 67:11 79:8 90:24 91:6 94:7,12,14 united 1:1 25:15 units 18:13,17 28:15 45:23 46:6 65:18 72:16 79:2 86:24 unlawful 83:11 unqualified 95:1 unreasonable 59:20 unwanted 48:17 upheld 8:8 19:24 66:21 upholding 61:8 urge 56:23 usage 17:18 use 12:15 18:6 28:15,23 30:8 32:2,10,10,12,12 34:17 36:10,11,14 36:18 40:10 41:12 46:12,15 50:20</p>	<p>61:18 62:20 64:1 64:4 65:3,6 66:3,5 66:7,18 67:1,4,9 67:11,12,18 69:6 73:7 76:9 79:2,3 95:3,12 uses 79:4,5</p>
		<p>v</p>	
		<p>v 1:5,11 vacant 10:1 40:17 46:6 vague 40:25 valid 21:9 33:15 66:12 validity 77:2 validly 67:14 value 53:9 66:22 68:2,16,20 69:17 various 16:13 33:5 70:25 veritext 1:23 versus 3:5,7 viability 74:22 view 6:25 19:24 30:14 35:10 views 6:10 80:17 violate 49:8 violates 3:25 60:1 violation 56:21 85:21 violations 18:3 virtually 4:6 14:17 vitiates 24:21 voice 39:13 voices 74:12 volatile 43:6 voluntarily 31:2 42:4 43:22 voluntary 31:6,8 45:8</p>	

votes 36:4	ways 4:1 51:13 54:6,7 66:10 68:3 70:25 88:8	written 52:17,18 wrong 9:10	zoom 1:14
w		x	
wadsworth 67:25 wait 6:19 41:16,18 waiting 65:18 waived 41:24 42:14 want 9:14 12:6,7 13:24 14:22 15:19 22:11,14 29:15 30:25 34:1 36:17 36:20,22 37:15 39:2,4,22 40:4,13 40:15,16,17,17,18 44:25 45:14 50:5 50:10,19 51:1,2 57:25 60:18 62:20 62:21 63:17 64:13 65:9,9 66:19 70:15 72:10 74:2 77:10 79:2 80:4,4 84:4,21 87:8,9,11 87:12,13 88:3 91:6,9 94:20 95:10,11,12 wanted 11:16 30:22 49:22 58:25 61:20 wanting 49:18 wants 4:4 14:19 63:13 64:20 warrantless 17:4 watch 34:7 way 8:25 21:25 22:1,10 28:11,14 29:5,5 30:24 32:2 39:18 40:1 41:23 44:18 51:3 55:15 56:13 71:1 72:20 87:20 91:14 93:2 93:4	we've 25:18 26:17 36:5 47:11 66:21 81:23 88:4 91:13 weakly 68:17 69:21 weigh 69:13 weighs 69:20 went 31:16 44:19 51:1 62:8,9 70:22 73:12 79:17 whatsoever 30:6 wholeheartedly 92:9 wildly 52:19 win 12:7 15:13,16 15:18,21 80:16 82:8 88:25 wine 40:10 wings 65:18 wish 17:16,17,23 31:9 45:21,22 46:6 50:2 53:24 wishes 4:5,14 12:13 14:3 55:25 83:6 wonderfully 86:12 95:22,25 word 36:25 74:2 88:4 wording 65:20 worked 3:8 workers 7:11 20:1 works 14:24 15:3 worse 31:19 wreak 92:10 wreaking 92:7 writing 17:10	x 97:1 y yard 47:23 yeah 5:16 12:21 15:23 16:17 18:8 32:23 36:2 37:10 44:13 69:1 73:15 year 7:16 8:14 21:1 34:4 year's 28:12 51:8 years 25:24 26:1,2 51:4,12 71:21 yee 7:5 9:19 11:4 21:11 24:14 39:20 43:20,21 44:2 46:16 47:2 52:5 60:23 61:16 74:20 74:23 75:3,11,18 75:19 79:14,17 86:25 91:10,11,15 93:20 94:15,23,25 yee's 47:16 york 1:6,12 3:5,7 31:17 36:24 43:5 48:12 50:25 52:11 54:6 58:17 59:19 67:1 74:11 75:8 80:23 81:7 87:18 87:22,25 89:9 york's 87:20	
		z	
		zoned 41:11 zoning 41:20,22 65:6 66:10,11,14 66:19,20 zonings 66:21	