

3. The Exemption Statute served its purpose. Property owners and investors built multifamily dwellings that housed thousands of people throughout New Jersey, including in the dozens of apartment towers along the waterfront in Jersey City. The City gained significant benefits, including newly constructed buildings, improved economic activity, and increased tax revenues.

4. Plaintiff Portside owns two of those towers: 100 Warren Street and 155 Washington Street, in Jersey City, known as “Portside Towers.” The towers were constructed in the 1990s, during the period of statutory exemption provided in the Exemption Statute. The towers are physically connected and operate as a single complex.

5. For decades, the City, the owner, and the tenants all treated Portside Towers as exempt from rent control pursuant to the Exemption Statute. Portside purchased the property, made investments in the towers, paid taxes on them, and made public filings with the City all based on the mutual understanding that they were covered by the Exemption and not subject to rent control.

6. After nearly 30 years of that treatment, however, the Jersey City Board decided on November 3, 2023 that Portside Towers is not entitled to the Exemption and is instead retroactively subject to the City’s local rent control ordinance (the “Ordinance”). The politically appointed Board announced that decision to cheers in a “standing room only” public meeting (as described by the Board chairman), in which one Board commissioner railed against landlords who do not “allow the tenant to get their due,” a phenomenon that he said is “happening all over the country.”

7. The sole stated basis for the Board’s decision was that Portside had not proven that its predecessor had sent certain notices to a “city construction official” at a specific time in the 1990s, roughly three decades earlier. Jersey City’s own Rent Leveling Administrator had rejected

that conclusion in a 2022 proceeding, but the Board reversed the Administrator's well-reasoned determinations.

8. The Board's decision was pretextual, arbitrary and capricious, and wrong as a legal matter. As just one example, the Board focused exclusively on the issue of notices to the city construction official, despite that the state Exemption Statute does not require proof of such notices for purposes of determining eligibility for the Exemption, much less require that a notice must be proven decades after the fact, upon pain of a retroactive loss of the Exemption. The Board stressed aspects of the City's own rent control Ordinance that purport to require notice as a prerequisite to exemption (contrary to the Exemption Statute), but the undisputed evidence established that the City's own construction official told Portside's predecessor not to send him the notices.

9. Further, the Board erroneously ordered that the Rent Leveling Administrator should "adjust" the rents charged at Portside Towers to a rent-controlled level during a "lookback window" beginning in 2016 through the present. That is, going forward, Portside must set rents based on the limited increase available under the City's rent control ordinance, and must do so as if rents have been set under the level allowed by that ordinance since 2016. Tenants are likely to seek significant refunds or credits on the basis of those calculations.

10. The Board's decision, if allowed to stand, would potentially transfer millions of dollars of value from the property to the tenants. Application of the decision may also diminish the market value of the property beyond the value of the lost rent.

11. Jersey City cannot dispute that it had notice of Portside's exemption to rent control, nor that each of the thousands of tenants who lived at Portside Towers over the last thirty years received individualized notices of that exemption and agreed to them in their leases. Those tenants

freely entered into leases to live at Portside Towers, including many who have renewed for multiple years with notice on each occasion that the building is exempt from rent control.

12. Moreover, Jersey City cannot dispute that it has benefited directly and materially from Portside's exempt status. Since the 1990s, Portside has made regular payments to the City under a "payment in lieu of taxes" based on the revenue received from the exempt rents Portside has charged. Had Portside Towers been subject to rent control, those payments would have been substantially lower, but the City accepted the higher payments that flowed directly from Portside Towers' exempt status.

13. Jersey City's decision to overrule the determinations by the Rent Leveling Administrator that the buildings are exempt from rent control was a pretext for depriving Portside of its contractual and property rights for the benefit of a local political constituency. As set forth below, the decision violates a number of constitutional protections in the United States and New Jersey Constitutions, was contrary to New Jersey state law, and was arbitrary, capricious and unreasonable.

SUMMARY OF CLAIMS

14. The Board's decision, and its underlying retroactive and illegal application of the Ordinance, violates the protections afforded by the United States Constitution, the New Jersey Constitution, and New Jersey law in at least five important ways:

15. First, Defendants' actions constitute an unlawful taking of property without compensation, in violation of the Fifth Amendment to the U.S. Constitution and parallel provisions of the New Jersey Constitution. The Exemption created by State law is itself a form of valuable property, which the Board has purported to take without compensation. The buildings and the right to rent them at market prices is also a form of property that has been taken without

compensation. The Takings Clause of the Fifth Amendment prohibits those actions, or, at a minimum, requires the City to pay Portside just compensation for the property it has taken.

16. Second, Defendants' actions violate the Due Process Clause of the United States Constitution and parallel provisions of the New Jersey Constitution. After the City and the Board treated Portside Towers as exempt from rent control for nearly thirty years and enjoyed the benefits of Portside's investments in the buildings and the community, the City and the Board are now retroactively stripping Portside of its exempt status through an unfair process that purportedly required Portside to prove the filing of paperwork roughly three decades ago.

17. Third, the City's rent control scheme violates the Contracts Clause of the United States Constitution and parallel provisions of the New Jersey Constitution, by retroactively impairing Portside's leases with its tenants without an appropriate and lawful basis.

18. Fourth, the Board's decision and the City's rent control Ordinance violate and are preempted by New Jersey state law, including the Exemption Statute. The Exemption Statute provides that local rent control ordinances "shall not apply" to buildings like Portside Towers. Nothing in the Exemption Statute permits municipal authorities to disallow the state-law Exemption, nor to add their own retroactive requirements to prove eligibility for the Exemption.

19. Fifth, the Board's decision was incorrect as a matter of law and arbitrary and capricious. As the Rent Leveling Administrator found, Portside Towers qualified for the Exemption from the beginning, including because Portside's predecessor provided notice to the city construction official in 1994, which, along with other attendant circumstances, was all that was required to establish substantial compliance. The Board's decision was arbitrary, capricious, and unlawful in a dozen other respects.

20. For each reason, Portside respectfully requests that the Court order declaratory, injunctive, and monetary relief as further set out below, including a declaration that:

- a. Portside is entitled to to the continued application of the Exemption;
- b. The Board may not prevent Portside from acting in accordance with the Exemption;
- c. The Board may not enforce the Ordinance’s rent control provisions against Portside until the Exemption expires; and
- d. The Board may not direct an adjustment of rents at Portside Towers based on the Ordinance, nor compel Portside to adjust its rents, either prospectively or retroactively, during the period of the Exemption.

PARTIES

21. Plaintiff The Towers at Portside Urban Renewal Company, L.L.C. owns Portside Towers, a premiere residential apartment community in Jersey City, New Jersey, comprised of two multi-family residential apartment towers located at 100 Warren Street (“100 Warren”) and 155 Washington Street (“155 Washington”). In the Jersey City proceedings, this entity was referred to as “Portside Urban Renewal Company LLC.”

22. Plaintiff Equity Residential Management, LLC is an affiliate of Portside and manages the property under a written management agreement. Equity Residential Management, LLC acts as agent for Portside with respect to leasing and other operational matters at the property.

23. Defendant City of Jersey City is a municipality incorporated in the State of New Jersey.

24. Defendant City of Jersey City Rent Leveling Board is a public entity located at 4 Jackson Square, Jersey City, New Jersey 07305. The Board is a body of the City of Jersey City established pursuant to Jersey City municipal ordinance and is empowered to execute, consistent

with New Jersey law, Jersey City's Rent Control Ordinance, Chapter 260 of the Jersey City Municipal Code.

JURISDICTION AND VENUE

25. This Court has subject matter jurisdiction over this matter pursuant to 28 U.S.C. § 1331 and 28 U.S.C. § 1343 because multiple counts of the complaint arise under federal law, including the United States Constitution and 42 U.S.C. § 1983.

26. This Court has supplemental jurisdiction over the state law claims set out herein pursuant to 28 U.S.C. § 1367(a) because those claims are so related to the federal claims that they form the same case or controversy.

27. Venue is proper under 28 U.S.C. § 1391 (b) and (c) because all Defendants are subject to personal jurisdiction in the District of New Jersey, the relevant property is located in the District of New Jersey, and a substantial part of the events or omissions that gave rise to this action occurred in the District of New Jersey.

FACTUAL BACKGROUND

A. New Jersey Temporarily Exempts From Rent Control Buildings with Four or More Apartments Constructed After 1987.

28. The Exemption Statute, N.J.S.A. § 2A:42-84.2, provides (emphasis added):

In any municipality which has enacted or which hereafter enacts a rent control or rent leveling ordinance . . . those provisions of the ordinance which limit the periodic or regular increases in base rentals of dwelling units *shall not apply* to multiple dwellings constructed after [June 25, 1987], for a period of time not to exceed the period of amortization of any initial mortgage loan obtained for the multiple dwelling, or for 30 years following completion of construction, whichever is less.

29. The Exemption Statute further provides that the purpose of the statute is to encourage the construction of new multifamily buildings in New Jersey:

The Legislature deems it to be necessary for the public welfare to increase the supply of newly constructed rental housing to meet the need for such housing in

New Jersey. In an effort to promote this new construction, the Legislature enacted [the statute], the purpose of which was to exempt new construction of rental multiple dwelling units from municipal rent control so that the municipal rent control or rent leveling ordinances would not deter the new construction.

Id. § 2A:42-84.5.

30. The Exemption Statute also makes clear that subordinate units of government in New Jersey, including municipalities, have no power to limit the exemption from rent control provided by the statute (emphasis added):

No municipality, county or other political subdivision of the State, or agency or instrumentality thereof, shall adopt any ordinance, resolution, or rule or regulation, or take any other action, *to limit, diminish, alter or impair* any exemption afforded pursuant to [the statute].

Id.

31. The Exemption Statute contains two provisions that refer to notices. The first provides that an exempt building owner is to provide a notice to prospective tenants about the exemption. *Id.* § 84.3. The second provides that the building owner is to provide a notice of the exemption to a “municipal construction official” 30 days before the “issuance of a certificate of occupancy for the newly constructed multiple dwelling.” *Id.* § 84.4.

32. Importantly, nothing in the Exemption Statute provides that the Exemption is contingent on the provision of those notices, nor that a subsequent inability to prove that the notices were provided years earlier would result in a retroactive forfeiture of the Exemption.

B. Jersey City’s Rent Control Scheme.

33. Jersey City has adopted a rent control ordinance at Chapter 260 of the Jersey City Municipal Code. In general, the Ordinance restricts a property owner from increasing the rent charged for an apartment by more than the lesser of: (a) 4%; or (b) the percentage change in the consumer price index over a set period. Code of Jersey City, Ordinance § 260-3. The Ordinance contains other restrictions on the ability of property owners to set rents. For over 25 years, and

until recently, Jersey City and the tenants at Portside have recognized that Portside was exempt from this Ordinance pursuant to the Exemption.

34. The Ordinance recognizes the state-law Exemption provided by the Exemption Statute, but also sets out its own exemption with its own requirements (the “Local Exemption”). Although the state’s Exemption Statute does not require notice as a prerequisite to exempt status, the City’s Local Exemption purports to create such a condition precedent. In particular it provides:

In accordance with [N.J.S.A § 2A:42-84.1], the provisions of this chapter shall not apply to a new dwelling which is constructed [after June 25, 1987] . . . for a period of time not to exceed the period of amortization of any initial mortgage loan obtained for the dwelling, or for 30 years following completion of construction, whichever is less. *This exemption [the Local Exemption] applies only where an owner complied with all requirements contained in [§ 2A:42-84.1, et seq.], including the filing with the municipal construction official required by [id. § 84.4] and service of a written statement upon the tenant required by [id. § 84.3].*

Ordinance § 260-6(C) (emphasis added).

35. In other words, according to Jersey City’s Ordinance as interpreted by the Board, a property owner is not eligible for the Local Exemption unless it can prove that it sent the notices referenced in the Exemption Statute at the times referenced in that statute, which, in this case, were periods in the 1990s.

36. The state law Exemption exists independently from the Local Exemption. Therefore, the purported unavailability of the Local Exemption has no bearing on the availability of the state Exemption. Nor can the Local Exemption impose a condition on the availability of the state Exemption, because the state Exemption expressly provides that it may not be “limit[ed], diminish[ed], alter[ed] or impair[ed]” by any municipal enactment. N.J.S.A § 2A:42-84.2

C. Portside Towers Is Constructed And First Rented During The Exemption Period.

37. The two towers of Portside Towers were both constructed within the period specified in the Exemption Statute. Construction on 100 Warren was completed on August 25,

1992, and it was converted to a multifamily building shortly thereafter. Construction on 155 Washington was completed on December 31, 1997. Both towers were developed in reliance on the applicability of the Exemption.

38. The two towers are part of the same complex on a single block on the waterfront in Jersey City. They are part of the same tax block and were constructed under the same development plan and developer's agreement with the City.

39. A certificate of occupancy for 100 Warren was initially issued on August 25, 1992. At that time, the building was not open to residents and was planned as a condominium development.

40. A predecessor to Portside acquired the property in a foreclosure sale on November 23, 1994. It remained unoccupied.

41. That same day, November 23, 1994, Portside's predecessor sent a notice of exemption to Jersey City's Construction Code Official, Michael Regan. The notice stated:

Portside Apartments Urban Renewal Partners, L.P. is the owner of [100 Washington], which is a newly constructed multiple dwelling unit containing 229 rental dwelling units. We are hereby claiming exemption from rent controls . . . and any form of future rent control pursuant to N.J.S.A. 2:42-84.1 et seq. The period for which exemption is claimed for the 229 units in this building shall commence on the anticipated date of initial occupancy, January 1, 1995.

42. Mr. Regan did not accept the notice. He responded on December 6, 1994, writing, "Please be advised that the Office of Construction Official has no jurisdiction over rent controls and I would suggest that you contact the proper agency charged with that responsibility."

43. On January 24, 1995, the Jersey City Construction Department issued a certificate of continued occupancy for 100 Warren. 100 Warren thereafter opened for residential rental occupancy.

44. Jersey City issued the Certificate of Occupancy for 155 Washington on December 31, 1997.

45. Although the City was able to locate the 1994 notice letter to Mr. Regan for 100 Warren, neither Portside nor the City has located a letter of exemption sent to Mr. Regan that specifically references 155 Washington. As noted above, however, Mr. Regan advised Portside in writing in 1994 not to send him such letters.

D. Portside Towers Is Treated As Exempt From Rent Control For Many Years.

46. Since at least the late 1990s, Portside Towers has been treated as exempt from rent control by all relevant parties in Jersey City. Portside relied on the rent control exemption and the City directly benefited from the exempt rents that Portside charged.

47. Portside conspicuously disclosed in its leases with tenants that the buildings are exempt from rent control. Until 2022, no tenant filed a complaint alleging that the buildings do not qualify for the state-law Exemption or the Local Exemption.

48. Portside has made filings with Jersey City authorities indicating that the buildings are exempt from rent control. Until 2023, no Jersey City official indicated a belief that the buildings do not qualify for either Exemption.

49. For decades, Portside paid fees to Jersey City pursuant to a payment in lieu of taxes (“PILOT”) program, based on the revenues that Portside Towers generated by charging market-based rents. Through the PILOT fees, established through a financial agreement and ordinance and subject to yearly audit by Jersey City, the City directly participated in and benefited financially from the rents Portside was able to charge as a result of the Exemption. Prior to 2022, no Jersey City official suggested that Portside should pay lower PILOT fees or reduce the rents it charged because Portside Towers allegedly did not qualify for the Exemption.

50. The tenants of Portside Towers also benefited from the increased investment and expenditures that were permitted by exempt rents, through building improvements and numerous amenities. Further, in a rent control regime, the owner would have been entitled to seek reimbursement from tenants for capital improvements, increases in state and local taxes, and/or other permissible reimbursements and cost increases.

E. The Administrator Correctly Finds That Portside Towers Is Exempt.

51. Beginning in June 2022, tenants filed petitions with the Office of Landlord/Tenant Relations Bureau of Rent Leveling (“the Bureau”) contending Portside Towers is not exempt from Jersey City’s rent control Ordinance. Among other arguments, the tenants argued that Portside could not establish that its predecessor had, decades earlier, sent the notices described in the Exemption Statute.

52. Over several months, the Bureau’s Rent Leveling Administrator received briefing and evidence from the tenants and Portside.

53. On September 19, 2022, the Rent Leveling Administrator found that Portside Towers properly qualified for the Exemption under the Exemption Statute.

54. With respect to the notice to tenants described in N.J.S.A. § 2A:42-84.4, the Rent Leveling Administrator found that it was “undisputed that the Landlord has met [that] criteria” by sending tenants a “Rent Control addendum” notifying tenants that the buildings are exempt from rent control. Ex. A, Sept. 19, 2022 Notice of Decision re 155 Washington Street, at 3.

55. With respect to the notice to the “city construction official” described in N.J.S.A. § 2A:42-84.4, the Rent Leveling Administrator found that Portside’s predecessor had provided the notice for 100 Warren Street by sending the November 23, 1994 letter to Mr. Regan, the Jersey City Construction Code Official. Ex. B, Sept. 19, 2022 Notice of Decision re 100 Warren Street,

at 3. The tenants argued that the November 23, 1994 letter was too late, because the Exemption Statute called for a notice “at least 30 days prior to the issuance of a certificate of occupancy for the newly constructed multiple dwelling.” N.J.S.A. § 2A:42-84.4. As noted above, the initial certificate of occupancy for Portside Towers was issued on August 26, 1992. However, as the Rent Leveling Administrator found, Portside Towers was not occupied at that time (it had been planned as condominiums and then fell into a foreclosure proceeding because of economic distress). It was not until January 24, 1995, after Portside’s predecessor purchased the building and adapted it to a rental property, that Portside obtained a certificate of continued occupancy for 100 Warren Street. The tower was first occupied after that time. The Rent Leveling Administrator found that the November 23, 1994 notice, delivered more than 30 days before the certificate of continued occupancy, was timely.

56. With respect to 155 Washington, the Rent Leveling Administrator found that “no letter to the Construction Code Official . . . has been located but that does not mean that one was not sent.” Ex. A at 4. Rather, given the passage of more than twenty years since the construction of the building and “in light of Mr. Regan’s December 6, 1994 letter” telling Portside that he did not believe he was the proper recipient of such notices, it was at least “as likely as not” that a notice was sent but not filed. *Id.* at 4. Moreover, the Rent Leveling Administrator found that Jersey City had known since the 1990s that Portside Towers was effectively a single development. Because Jersey City had received the 1994 letter regarding 100 Warren Street, and because Portside had made multiple filings indicating that the entire project was exempt, there was no doubt that “the City was aware of this development and the Landlord’s claim of exemption.” *Id.* at 5. Further, “[f]rom the start, the Tenants residing at 155 Washington have been advised that the building is not subject to rent control.” *Id.* The Administrator noted the tenants’ arguments that Portside had

checked the wrong box regarding rent control on a few registration statements, but found that of no import in light of all of the other circumstances establishing notice to the City and tenants.

57. For those reasons and others, the Rent Leveling Administrator held that both Portside Towers buildings were exempt from rent control. Regarding 155 Washington, the Rent Leveling Administrator held that the Exemption applies from December 31, 1997 (the completion of construction) through December 30, 2027. Regarding 100 Warren Street, the Rent Leveling Administrator held that the Exemption applies from August 24, 1992 (the completion of construction) through August 24, 2022. Ex. A at 7; Ex. B at 6.

F. The Board Erroneously Finds That Portside Towers Does Not Qualify For The Exemption.

58. The tenants sought review of the Rent Leveling Administrator’s decision by the Board.

59. The Board received written submissions from the parties and conducted hearings on May 31, 2023 and October 19, 2023.

60. In the description of the Board’s chairman, the October 19, 2023 hearing was held before a “sold out crowd” with “standing-room only box seats.” The hearing lasted approximately 17 minutes and mainly consisted of individual commissioners, all politically appointed by the City’s mayor, announcing how they intended to vote. One commissioner stated in his first remarks: “This is happening all over the country; this is happening too much in Jersey City . . . owners are not doing what they are supposed to do to allow the tenant to get their due.” After the Board announced its decision to “side with the tenants,” the sold-out crowd applauded.

61. The Board issued a written decision on November 3, 2023. The Board decision stated that “both 100 Warren and 155 Washington are subject to Jersey City rent control regulations.” Ex. C, November 3, 2023 Board Decision, at 10. The sole basis for that conclusion

was the Board's opinion that Portside had not established that timely notices of rent control exemption were provided to the City construction official (Mr. Regan) in the 1990s. *Id.* Notwithstanding that the state-law Exemption is unconditional, the Board conflated the Local Exemption and the state's Exemption, and the Board held that providing the construction official notice "is a mandatory condition precedent to receipt of this rent control exemption requiring strict compliance with its terms." *Id.* at 8.

62. The Board acknowledged that the Exemption Statute "does not expressly provide for a remedy where an exemption is inaccurately assumed by the municipality and/or the property owner," but nevertheless found that it would retroactively strip Portside Towers of its exemption: *i.e.*, "there was no valid exemption from the beginning of the occupancy of the units." *Id.* at 9.

63. The Board additionally directed the Bureau to "adjust the rent on all units within the buildings dating back six years from the filing of the first [petition] at issue in the instant matters for each building." *Id.* at 10.

G. The Board's Decision Creates Irreparable Harm.

64. By purporting to find that Portside Towers has never been eligible for the Exemption, the Board's decision creates irreparable harm for Portside.

65. As discussed, subjecting Portside Towers to the Ordinance will substantially impair and take Portside's property rights. Portside stands to lose the entire value of the Exemption, the value of future market rents, and the value of retroactive "adjustments" to past rents that have already been paid. Further, because of tenant turnover, if Portside is required to provide rent credits or other compensation to tenants as a result of the Board's decision, there is a significant risk that Portside will be unable to recover the value of that compensation from tenants if Portside ultimately prevails in this action.

66. The Board’s pretextual decision would transfer millions of dollars of value from the property to the tenants. The decision will also diminish the value of the property beyond the value of the lost rent.

COUNT I
THE BOARD’S DECISION AND THE
ORDINANCE VIOLATE THE TAKINGS CLAUSES OF THE
U.S. CONSTITUTION AND THE NEW JERSEY CONSTITUTION

67. Plaintiffs repeat and reallege all of the foregoing allegations as if fully set forth herein.

68. The United States and New Jersey Constitutions require just compensation where the government takes private property for public use.

69. The Fifth Amendment to the United States Constitution states: “[N]or shall private property be taken for public use, without just compensation.” U.S. Const. amend. V.

70. Article I, Section 20 of the New Jersey Constitution states: “Private property shall not be taken for public use without just compensation. Individuals or private corporations shall not be authorized to take private property for public use without just compensation first made to the owners.” N.J. Const. art. I, ¶ 20. This provision is considered coextensive with the corollary provision in the Fifth Amendment. *Mansoldo v. State*, 898 A.2d 1018, 1023 (N.J. 2006).

71. These provisions are known as the Takings Clauses.

72. The United States Supreme Court has recognized that the fundamental purpose of the Takings Clause is “to bar [the] Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 542 (2005) (quoting *Armstrong v. United States*, 364 U.S. 40, 49 (1960)). “[W]hile property may be regulated to a certain extent, if the regulation goes too far

it will be recognized as a taking.” *Id.* at 537 (quoting *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922) (Holmes, J.)).

73. The Supreme Court in *Yee* held that once a plaintiff raises a takings claim, it may proceed under any and all theories that support that claim:

Petitioners’ arguments that the [rent control] ordinance constitutes a taking in two different ways, by physical occupation and by regulation, are not separate claims. They are, rather, separate arguments in support of a single claim – that the ordinance effects an unconstitutional taking.

Yee v. City of Escondido, 503 U.S. 519, 534-35 (1992) (emphasis removed).

74. The Supreme Court in *Lingle*, 544 U.S. at 538-39, recognized that a takings claim may be brought under *Penn Central Transportation Co. v. New York City*, 438 U.S. 104 (1978).

75. Here, the Board’s decision and the Jersey City Ordinance violate the Takings Clauses in at least three ways: (a) they deprive Portside of its right to the Exemption and its right to charge market rent without compensation; (b) they constitute a regulatory taking of the Towers; and (c) they effect a physical taking of the Towers.

A. The Ordinance and the Board’s Decision Violate The Takings Clauses By Depriving Portside Of Its Right To The Exemption And Its Right to Charge Market Rent Without Compensation

76. If, as the Board held, Portside is deemed to be subject to the Ordinance and to have lost its right to the Exemption, the Board’s decision and the Ordinance as applied in this case will effect a taking of Portside’s property under the standard set forth in *Penn Central*. *See Om 309-311 6th St., LLC v. City of Union City*, No. 21-12051, 2022 WL 855769, at *7 (D.N.J. Mar. 23, 2022) (recognizing an alleged regulatory taking of the landlord’s “right to contract with tenants to charge the maximum legal rent.”)

77. Specifically, Portside’s entitlement to the Exemption has been taken without just compensation. In addition, Portside’s property right to charge market rents has been taken without compensation.

78. Although there is no “set formula” for evaluating a regulatory takings claim under *Penn Central*, the Supreme Court has identified “several factors that have particular significance.” *Id.* at 124. These factors are the “character of the government action,” the “economic impact of the regulation on the claimant,” and the “extent to which the regulation has interfered with distinct investment-backed expectations.” *Id.*

79. Each factor weighs against the government here.

80. The character of the government action here plainly constitutes a taking. The Board unexpectedly and retroactively revoked the Exemption from Portside for arbitrary and pretextual reasons. *Cf. Om 309-311*, 2022 WL 855769, at *16 (alleged “bad faith on behalf of government can weigh in favor of a taking.”).

81. Part of the inquiry into the character of the government action includes whether it promotes a public purpose. *Dolan v. City of Tigard*, 512 U.S. 374, 388 (1994) (“[A] use restriction may constitute a ‘taking’ if not reasonably necessary to the effectuation of a substantial government purpose”) (quoting *Nollan v. Cal. Coastal Com*, 483 U.S. 825, 834 (1987)). The Board’s actions will not further any legitimate public purpose. Indeed, the entire purpose of the Exemption was to increase new residential rental construction in New Jersey. Exemption Statute § 2A:42-84.5. Arbitrarily revoking the Exemption operates in direct opposition to the stated reason of the New Jersey legislature for enacting it.

82. The economic impact on Portside also weighs in favor of finding a taking. The Exemption provides Portside with the ability to offer rental apartments at the market rate; a right

that is worth millions of dollars. The Board's decision will completely deprive Plaintiffs of the value of the Exemption and completely eliminate Plaintiffs' right to obtain market rent. *See Cienega Gardens v. United States*, 331 F.3d 1319, 1344 (Fed. Cir. 2003) (finding a taking where the plaintiff's loss of its right to an economic benefit was "both total and immediate.").

83. The Board's actions also interfere with Portside's reasonable investment-backed expectations. Portside reasonably expected that the City would continue to treat the buildings as exempt from the Ordinance, as it had for decades. As reviewed above, Portside made filings with the City indicating that the buildings were exempt, disclosed to tenants that the buildings were exempt, and paid into public funds based on market-based rental revenues. Given that long course of conduct and the City's acceptance of it, it was reasonable for Portside to expect the government to continue accordingly. *See Om 309-311*, 2022 WL 855769, at *15.

84. Portside relied on its reasonable expectation of continued exemption in many material ways. Portside relied on the Exemption when it initially purchased Portside Towers, knowing that, based on their construction dates, the buildings would be exempt from rent control. *See Cienega Gardens*, 331 F.3d at 1346 (holding that because reliance on the right to enjoy the property interest in question was "essential" factor to plaintiff's decision to invest, removing that property interest impeded upon plaintiff's investment-backed expectations). Portside continued to rely on the Exemption when it invested in Portside Towers and made capital improvements to the buildings, as Portside expected the Exemption would allow it to receive a favorable return on those investments. And Portside relied on the Exemption when offering its lease agreements to its tenants for nearly 30 years, disclosing in each one that the buildings were exempt from rent control.

85. Accordingly, the Board, by applying the rent control provisions of the Ordinance to Portside and prohibiting it from exercising its rights under the Exemption, has effected a regulatory taking in violation of the United States and New Jersey Constitutions.

B. The Ordinance Violates The Takings Clauses By Diminishing The Value Of Portside Towers Without Compensation

86. Plaintiffs repeat and reallege paragraphs 1 through 85 of the foregoing allegations as if fully set forth herein.

87. If, as the Board held, the Ordinance is deemed to apply to Portside Towers, then the Ordinance and the Board's decision will deprive Portside of its property without compensation, including by depriving Portside of the full value of its investment in Portside Towers.

88. Each *Penn Central* factor weighs against the government here. As discussed, the Board's action was unexpected, retroactive, and will not further a legitimate public purpose. Any market participant considering an investment in building rental housing in Jersey City will second-guess that choice if the State-law Exemption can be retroactively taken away. Companies such as Plaintiff will be disincentivized from investing in and operating apartment buildings in Jersey City if they too may be deprived of benefits promised to them based on a disputed technicality.

89. If the Board's decision stands, Portside will also be materially economically impacted, as it will lose the ability to charge a reasonable rent consistent with the needs of its properties. The Board's decision will limit Portside's ability to increase rents to the lesser of (a) 4% or (b) the percentage difference between the consumer price index three months prior to the expiration or termination of the lease and three months prior to the commencement of the lease term.

90. The Board's decision will therefore create an exponentially-expanding gap between the permitted rental income for the buildings and the fair market rent for the buildings.

91. That economic impact is immediate and permanent. It will deprive Portside of a substantial portion of the value of its property. See *Keystone Bituminous Coal Ass'n v. DeBenedictis*, 480 U.S. 470, 497 (1987) (“[O]ur test for regulatory taking requires us to compare the value that has been taken from the property with the value that remains in the property. . . .”).

92. The Board’s actions, too, interfere with Portside’s investment-backed expectations in its investment in Portside Towers. Portside invested significant capital in purchasing and improving Portside Towers. Portside has legitimate expectations based on the value of its property for which it can derive a fair market return on the value of its property and on its investments in that property. Applying the Ordinance to Portside will deprive Portside of a fair return on its property and investments.

93. As the Supreme Court recognized in *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001), market expectations are based upon fair market values, not historical costs or the value of a property under regulation. *Id.* at 625 (confirming that “[w]hen a taking has occurred . . . the owner’s damages will be based upon the property’s fair market value. . . .” (citing *Olson v. United States*, 292 U.S. 246, 255 (1934))).

94. “The ‘investment-backed expectations’ that the law will take into account do not include the assumed validity of a restriction that in fact deprives property of so much of its value as to be unconstitutional.” *Id.* at 637 (Scalia, J., concurring).

95. Thus, Portside has a reasonable expectation that it will receive a rate of return commensurate with the current market value of the land and buildings. Indeed, Portside has acted in reliance on this expectation in significant and material ways, through investing in and improving Portside Towers for decades. The Board’s decision will completely interfere with and preclude Portside from achieving those expectations.

96. Accordingly, the application of the Ordinance to Portside and the deprivation of Portside’s right to a fair return in its investment in Portside Towers effects a regulatory taking in violation of the United States and New Jersey Constitutions.

C. The Board’s Decision And The Ordinance Violates The Takings Clauses By Enacting A Physical Taking Of Portside’s Property

97. Plaintiffs repeat and reallege all of the foregoing allegations as if fully set forth herein.

98. Under *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), and *Yee*, the Board’s enforcement of the Ordinance on Portside will constitute a physical taking of Portside’s property as a matter of law because Portside will be unable to prevent unwanted tenants from physically occupying its land – “one of the most essential sticks in the bundle of rights that are commonly characterized as property.” *Cienega Gardens*, 331 F.3d 1319, 1338 (quoting *Kaiser Aetna v. United States*, 444 U.S. 164, 177 (1979)).

99. Portside never would have acquired or operated these properties if it were required to do so under rent control. By forcing it to operate on unacceptable terms, the Board’s decision has resulted in thousands of tenants occupying Portside’s property even though Portside did not and would not have agreed to permit them on its property under those terms.

100. Accordingly, the Ordinance’s deprivation of Portside’s ability to exclude people from its property effects a physical taking in violation of the United States and New Jersey Constitutions.

COUNT II
**THE ORDINANCE VIOLATES THE DUE PROCESS CLAUSES
OF THE UNITED STATES CONSTITUTION AND NEW JERSEY CONSTITUTION**

101. Plaintiffs repeat and reallege all of the foregoing allegations as if fully set forth herein.

102. The Due Process Clauses of the United States and New Jersey Constitutions protect all persons from arbitrary and capricious government action that lacks a nexus to a public purpose and deprives any person of its property.

103. The Due Process Clause of the United States Constitution provides that no state may “deprive any person of life, liberty, or property, without due process of law. . . .” U.S. Const. amend. XIV, § 1.

104. The New Jersey Constitution guarantees that all persons “have certain natural and unalienable rights” including the fundamental right of “acquiring, possessing, and protecting property. . . .” N.J. Const. art. I, ¶ 1.

105. The Board has purported to strip Portside of the Exemption and of its right to charge market rents without due process. Requiring a property owner to prove that a notice was sent decades in the past by a predecessor owner, upon pain of retroactively losing a valuable legal right, violates due process. Portside did not receive a fair opportunity to prove its entitlement to the Exemption, including because the City’s own construction official told Portside not to send him notices and because the City treated Portside as if it had complied with the Ordinance for decades.

106. The retroactive nature of this liability constitutes an especially egregious due process violation. *See General Motors Corp. v. Romein*, 503 U.S. 181, 191 (1992) (“Retroactive legislation presents problems of unfairness that are more serious than those posed by prospective legislation, because it can deprive citizens of legitimate expectations and upset settled transactions.”)

107. The application of the Ordinance and the deprivation of the Exemption as to Portside—both unexpected and retroactive—violate the Due Process clauses of the United States and New Jersey Constitutions.

COUNT III
**THE ORDINANCE VIOLATES THE CONTRACTS CLAUSES
OF THE UNITED STATES CONSTITUTION AND NEW JERSEY CONSTITUTION**

108. Plaintiffs repeat and reallege all of the foregoing allegations as if fully set forth herein.

109. The Contracts Clause of the United States Constitution provides: “No state shall . . . pass any . . . Law impairing the Obligation of Contracts. . . .” U.S. Const., art. I, Sec. 10.

110. The Contracts Clause of the New Jersey Constitution provides: “The Legislature shall not pass any bill of attainder, ex post facto law, or law impairing the obligation of contracts, or depriving a party of any remedy for enforcing a contract which existed when the contract was made.” N.J. Const., art. VII, ¶ 3.

111. To establish a Contracts Clause violation, a plaintiff must show that a law impairs an existing contractual obligation and that the law is not “reasonable and necessary to serve an important public purpose.” *United States Trust Co. v. New Jersey*, 431 U.S. 1, 17, 25 (1977).

112. As to lease agreements, and especially with rent control ordinances, “to sustain the retroactive application of a rent control ordinance that exists with existing contract rights, the legislation must have a strong rational public purpose.” *South Hamilton Assocs. V. Morristown*, 99 N.J. 437, 445 (1985). In other words, for the government to override the agreement to apply market-based rents, which has been embedded in Portside’s leases for decades, it must prove that there was very good reason.

113. Each lease between Portside and its tenants in Portside Towers contains a Rent Control Addendum, which states that the building is “exempt from the provisions of any rent control ordinances instituted by Jersey City or West New York” and that it “will be exempt from any future rent control, rent stabilization, or rent leveling ordinance instituted by these

municipalities for a period of thirty years following the completion of construction at the [building].”

114. These Rent Control Addenda state that they are “dated and effective as of the date” of the lease, “attached and made part of” the lease, and “made by and between Lessor and Resident for the Premises at the [building] identified in the Lease.” These addenda are part and parcel of the lease agreement signed by all new tenants and renewed each year by all existing tenants at Portside Towers.

115. Those agreements were valid under state law. As discussed above, the Exemption Statute permits Portside to charge market-based rents. Portside and its tenants have contractually agreed for nearly 30 years that Portside is covered by the Exemption. Depriving Portside of the Exemption and applying the Ordinance now, decades later, will deprive Portside and its tenants of their fairly bargained for contractual rights in violation of the Contracts Clauses of the United States and New Jersey Constitutions.

COUNT IV
THE ORDINANCE IS UNLAWFULLY CONFISCATORY
UNDER NEW JERSEY LAW

116. Plaintiffs repeat and reallege all of the foregoing allegations as if fully set forth herein.

117. The Supreme Court of New Jersey has recognized that a rent control scheme that does not allow an owner’s return to keep pace with inflation is confiscatory and invalid.

118. Here, the Ordinance limits rental increases at the lesser of (a) 4% or (b) the percentage difference between the consumer price index three months prior to the expiration or termination of the lease and three months prior to the commencement of the lease term. Yet considering inflation rates in recent years, prices have and will likely continue to increase on

average by more than 4% annually, so that the dollar amount of the permissible rent increase will be less than the increase of inflation. Therefore, every year under the Ordinance, Portside will receive a declining rate of return on the value of Portside Towers.

119. In *Helmsley v. Borough of Ft. Lee*, 78 N.J. 200 (1978), a 2.5% limit on rent increases coupled with 5 years of expense increases at a 6% rate was found to result in an annual reduction in net operating margin and net income and was therefore confiscatory and facially invalid. *Id.* at 598. Here, the limit on rent increases, which can only ever reach 4% at the highest, is similarly confiscatory.

120. At present, Portside expends significant revenue it receives on operating expenses and other expenditures that are necessary to maintain and improve Portside Towers.

121. Accordingly, the Ordinance is unlawfully confiscatory and is invalid under New Jersey law.

COUNT V
VIOLATION OF N.J.S.A. § 2A:42-84.2 AND PREEMPTION BY SAME

122. Plaintiffs repeat and reallege all of the foregoing allegations as if fully set forth herein.

123. “Preemption is a judicially created principle based on the proposition that a municipality, which is an agent of the State, cannot act contrary to the state.” *Overlook Terrace Mgmt Corp. v. Rent Control Bd.*, 71 N.J. 451, 461 (1976).

124. The New Jersey Supreme Court has set forth “[p]ertinent questions for consideration in determining applicability of preemption.” Those are whether (1) the ordinance conflicts with state law; (2) the state law was intended to be exclusive in the field; (3) the subject matter reflects a need for uniformity; (4) the state scheme is “so pervasive or comprehensive that

it precludes coexistence of municipal regulation”; and (5) the ordinance stands as an obstacle to executing the state legislature. *Id.* at 461-62.

125. Here, the Exemption Statute mandates that local rent control ordinances “shall not apply” to buildings constructed after 1987. N.J.S.A. § 2A:42-84.2. Additionally, the legislative intent behind the Exemption Statute, noted at 2A:42-84.5, makes it clear that the state legislature intended for the Exemption to be mandatory to those that qualify. The statute provides that the legislature “deems it necessary for the public welfare to increase the supply of newly constructed rental housing to meet the need for such housing in New Jersey,” and therefore it enacted this statute “to exempt new construction of rental multiple dwelling units from municipal rent control.” Exemption Statute § 2A:42-84.5.

126. The Exemption Statute also expressly forbids municipalities from taking any action “to limit, diminish, alter or impair any exemption afforded pursuant to [the statute].” Exemption Statute at 2A:42-84.5. Clearly, then, the legislature intended that state law govern this field and that municipal law not interfere. *See Block 268, LLC v. City of Hoboken Rent Leveling & Stabilization Bd.*, 401 N.J. Super. 563 (2008) (finding that N.J.S.A. 2A:42-84.1 *et seq.* pre-empts municipalities from enforcing a rent control ordinance against plaintiff because “the language of the Act makes it clear that the Board may not limit or impair the exemption of multiple Dwellings constructed after the effective date of the Act.”)

127. The Board’s decision, which held that Portside must prove that it sent a notice to a construction official nearly thirty years ago in order to enjoy the Exemption, violates and is preempted by the Exemption Statute, which has no such requirement.

128. The Jersey City Ordinance is also preempted by the Exemption Statute, as it purports to require compliance with notice provisions as a prerequisite to enjoying the Exemption.

Ordinance § 260-6(c). This is exactly the type of action to “limit, diminish, alter or impair” the Exemption that is prohibited by the Exemption Statute. N.J.S.A. § 2A:42-84.5.

129. Nothing in the Exemption Statute indicates that compliance with notice provisions is a condition precedent to obtaining the Exemption. Nothing in the Exemption Statute authorizes municipal officials to investigate compliance with purported notice requirements or to determine whether a property owner qualifies for the Exemption. Nor does anything in the Exemption Statute permit municipal officials to retroactively revoke the Exemption.

130. Accordingly, the Board is preempted from enforcing the notice requirements as conditions precedent to the Exemption, and the Exemption must still apply to Portside. The Board’s holding to the contrary is preempted and violates the Exemption Statute.

COUNT VI
CLAIM IN LIEU OF PREROGATIVE WRIT

131. Plaintiffs repeat and reallege all of the foregoing allegations as if fully set forth herein.

132. Upon determination by the Rent Leveling Board, either party may appeal the decision to a court of competent jurisdiction. Ordinance § 260-13. The process for doing so is a complaint in lieu of prerogative writ. N.J. Ct. R. 4:69-6(a).

133. Pursuant to a complaint in lieu of a prerogative writ, courts review the factual determinations of municipal boards for whether they were arbitrary, capricious, or unreasonable. *Fallone Properties, L.L.C. v. Bethlehem Tp. Planning Bd.*, 369 N.J. Super. 552, 560 (Super. Ct. App. Div. 2004). Legal determinations are not entitled to deference and are reviewed de novo. *Id.* at 561; *Nuckel v. Borough of Little Ferry Planning Bd.*, 208 N.J. 95, 102 (2011).

134. The Board’s decision regarding Portside was arbitrary, capricious, and wrong as a matter of law in multiple respects:

a. The Board misapplied the Exemption Statute, including because the statute does not provide that notices are a condition precedent to eligibility for the Exemption. The Exemption Statute also does not require a property owner to prove, decades after the fact, that it provided such notices.

b. The Board further misapplied the Exemption Statute by holding that Portside had not provided sufficient notice of its rent control exemption. Specifically, the Board was incorrect as a matter of fact in rejecting the Rent Board Administrator's findings that the 1994 notice regarding 100 Warren was sufficient and that the two towers should be treated as one property for purposes of the exemption. Additionally, the Board's decision to require a property owner to locate a notice nearly 30 years after the fact, where the conduct of the City and the tenants reflects an understanding that the exemption applied, is particularly outlandish.

c. The Board erroneously interpreted the City's Ordinance as superseding the state Exemption and/or conflated the requirements of the Ordinance with the state Exemption Statute.

d. The Board failed to apply the State Exemption provision mandating that no local government may diminish the State Exemption.

e. The Board also failed to take into consideration the substantial evidence that the City and the Board treated Portside Towers as exempt from rent control for decades, with the City enjoying many years of payments from Portside Towers based on market rents. Those facts estop the City and the Board from taking the position that Portside Towers is retroactively not eligible for the Exemption or the Local Exemption.

f. The Board failed to provide any deference or even meaningful consideration to the Rent Leveling Administrator, who determined that sufficient notice of the exemption was given to the City.

g. The Board failed to apply the doctrine of substantial compliance in connection with the Exemption or the Local Exemption, particularly given that every tenant was indisputably provided actual notice, the City has been on notice of the exemption for three decades, the City's official informed the property owner not to send him notices, and the City would not have acted differently had further notice been provided.

h. The Board failed to apply the doctrine of laches to these actions notwithstanding that they were first brought nearly 30 years after the events at issue and notwithstanding that Portside was prejudiced by the passage of time with respect to its ability to locate relevant evidence including evidence related to whether notice was given decades before.

i. The Board acted arbitrarily, capriciously, unreasonably, and contrary to law in ordering a six year "look back" period when the relevant limitation period under the Ordinance would allow for a two year "look back" period at most.

j. The Board failed to give more than perfunctory consideration to this matter, as reflected by the transcript and video of the relevant proceedings, all of which are incorporated herein by reference.

k. The Board acted contrary to law in interpreting the Ordinance in a manner that would render it unconstitutional under the Due Process Clauses, Contract Clauses and Takings Clauses of the United States and New Jersey Constitutions.

l. The Board failed to consider that any alleged failure to provide notice to the relevant construction official was harmless in light of the fact that the buildings indisputably qualified for rent control and that there was no evidence that the municipality or construction official would have taken any different action based upon further notice.

m. The Board failed to apply the doctrines of waiver and estoppel to the conduct of the City, notwithstanding that the relevant municipal official informed the property owner not to send further notice, the municipality accepted the financial benefits of the Exemption for nearly thirty years, and the municipality failed to contest the applicability of the Exemption and Local Exemption until it had received the full benefits of the Exemptions both through the construction of the buildings and through increased payments to the municipality under the PILOT program.

n. The Board failed to consider that all residents voluntarily agreed to pay the market rents and continuously paid the applicable rents for nearly thirty years.

o. The Board acted arbitrarily, capriciously and unreasonably by terminating the Exemption retroactively on pretextual grounds and by thereby transferring the owner's property to a local political constituency when doing so has no reasonable connection to any appropriate public purpose.

COUNT VII
DECLARATORY JUDGMENT

135. Plaintiffs repeat and reallege all of the foregoing allegations as if fully set forth herein.

136. For the reasons set forth above, there exists an actual controversy between Portside, the Board, and the City concerning the rights of Portside with respect to the Exemption, the Local Exemption, and the ability to charge market-based rents for its real estate.

137. The Court should adjudicate the rights of Portside and declare the following:
- a. Portside is entitled to set market rents pursuant to the Exemption.
 - b. The Board may not prevent Portside from acting in accordance with the Exemption.
 - c. The Board may not enforce the Ordinance’s rent control provisions against Portside.
 - d. The Board may not direct the Bureau to adjust rents at Portside Towers based on the Ordinance, nor compel Portside to adjust its rents, either prospectively or retroactively.
 - e. In the alternative, if the Ordinance is deemed to apply to Portside Towers, the maximum “lookback period” that may be enforced by the Board is two years, under Ordinance § 260-7(C) & (D).

RELIEF REQUESTED

WHEREFORE, Plaintiffs respectfully demands judgment herein, including for declaratory and injunctive relief, along with the award of monetary damages and just compensation for the taking of its property in an amount to be proven at trial; for reasonable attorneys’ fees, costs, and expenses pursuant to all applicable rules, statutes, and law; and for any such additional and further relief as is just and proper.

Dated November 10, 2023
:

Respectfully submitted,

The Towers at Portside Urban Renewal Company
L.L.C. and Equity Residential Management, LLC

By: /s/ Derek D. Reed

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