No. 20-190

**In the**

**Supreme Court of the United States**

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DANIEL SOHN AND JULIET SOHN,

Petitioners,

v.

COUNTY OF MARIPOSA, etc., et al.,

Respondents.

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**On Petition for Writ of Certiorari to the California Court of Appeal, Fifth Appellate District**

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# PETITIONERS' REPLY TO OPPOSITION TO PETITION FOR WRIT OF CERTIORARI

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Janice R. Mazur
*Counsel of Record*
Mazur & Mazur, LLC
13465 Camino Canada,
No. 106-103
El Cajon, California 92021
Tel: 800-383-5002
email: appealslawyer@aol.com

Counsel for Petitioners

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## A. The petitioners raise significant issues related to a deprivation of civil rights under color of law which were never considered on the merits

The County attempts to reduce the issues in this case to mere factual disputes of importance solely to these litigants. Nothing could be further from the truth. Indeed, the County's observation that grants of certiorari are limited to matters "of importance to the public, as distinguished from that of the parties" (citing *Rice v. Sioux City Mem'l Park Cemetery* (1955) 349 U.S.70, 79, is, in fact, one of the reasons why certiorari should be granted in this case.

The merits of this case involve serious allegations of governmental wrongdoing. Through their painstaking research, the Sohns have uncovered compelling evidence that the County of Mariposa has engaged in a wide-spread, long-term, but virtually undetectable scheme to circumvent state statutory law enacted to protect the residents of Mariposa County. In doing so, the County, acting under color of law, violated the federally guaranteed civil rights of the Sohns, and potentially hundreds of other homeowners within the County. This assessment is borne out by the admission of the County's own Director of Public Works, who has conceded that this case presents a "can of worms" involving over 500 miles of roads which are in a similar situation to Vista Grande Way where the Sohns reside.

The County's assertion that review should be denied because the Petition does not refer to a conflict between courts, is disingenuous. As is clearly set forth in Supreme Court rule 10(c), this court has discretion

to grant review when a state court has decided an important question of federal law that has not been, but should be, settled by this Court.

Here, the important federal question which should be settled is whether a government entity violates the Fourth, Fifth and Fourteenth Amendments to the U.S. Constitution, and has, while acting under color of law, deprived its citizens of their civil rights within the meaning of 42 U.S.C. 1983, by intentionally and repeatedly violating state statutes designed to protect those citizens.

## B. The decision of the California Court of Appeal is incorrect

The County concedes that the applicable statute of limitations for a civil rights claim under 42 USC §1983 is two years, and it is undisputed that the County action upon which the Sohns' third cause of action is based (entering their real property and removing personal property under color of law based on an asserted easement) occurred on May 26, 2015, less than two years before the filing of the Sohns' complaint. Nevertheless, the County argues that the Sohns had constructive notice that the County's easement claim was invalid and that it had engaged in a long-term scheme to circumvent the Subdivision Map Act ("SMA"), since 1999. This assertion is false and the appellate court's erroneous adoption of this assertion is the reason the important issues raised in this action were never considered on the merits.

**1. The County's violation of the petitioners' civil rights by its entry onto their property did not occur until May 2015, and petitioners never had constructive notice that the County had not validly accepted the Bishop/Huntley dedications until 2015**

As is set forth in the petition, a claim based on a substantive due process violation is not complete until the government action occurs. *(Action Apartment Ass'n, Inc. v. Santa Monica Rent Control Bd* (9th Cir. 2007) 509 F.3d 1020 at 1027-1028). Here, the government action which gives rise to the claim, the County's wrongful entry onto petitioners' property under color of law, did not occur until May 26, 2015. On this basis alone, the claim is timely.

But even assuming, for the sake of argument, that the two-year limitations period began to run when the petitioners knew, or should have known, that the County's purported acceptance of the Bishop and Huntley dedications was invalid, the claim is still timely, since petitioners had no knowledge of the invalid acceptance, nor should they have, until 2015.

As the County points out, the recording of a deed gives constructive notice "of its contents". (*Aguirre v. Cal–Western Reconveyance Corp*., 2012 WL 273753, at *6 (C.D. Cal. 2012); *Warwick v. Bank of New York Mellon,* 2016 WL 2997166, at *22 (C.D. Cal., 2014); California Civil Code section 2934; see also Caito v. United California Bank (1978) 20 Cal.3d 694, 702 "[a] recorded instrument . . [gives] constructive notice . . . of its own contents and of other documents

referred to by it." [emph. added]); American Medical International, Inc. v. Feller (1976) 59 Cal.App.3d 1008, 1020-1021 [rule of constructive notice extends to whatever knowledge would be gained from investigating document referenced in recorded instrument. [emph.added].

Petitioners take no issue with the long-standing case law which holds that a recorded parcel map gives constructive notice of the subdivision to the public and subsequent purchasers. (Morehard v. Count of Santa Barbara (1994) 7 Cal.4th 725, 766). But there is no law which suggests that a recorded document gives constructive notice of a different document which is not referenced in any way in the underlying recorded document.

Here, the County's purported acceptance of the Bishop and Huntley dedications was set forth in Mariposa County Recorder's document number 911744, recorded on April 5, 1991.[1] It is undisputed that neither the Bishop nor the Huntley parcel maps make reference to this 1991 purported acceptance or to recorded Document 911744. It is undisputed that Document 911744 was not cross-referenced to the Bishop or Huntley maps and it was not discovered as part of the title search conducted by a professional title company at the time the Sohns purchased their property in 1999. Accordingly, because the purported 1991 acceptance is not part of the "contents" of the

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[1] Document 911744 is 18 pages long and purports to accept offers of dedication of easements made in 174 different parcel maps between 1977 and 1986. The "acceptance" of the Bishop and Huntley offers appear on page 6 of this document.

Bishop or Huntley maps, nor is it a document "referred to" in the Bishop and Huntley maps, the Bishop and Huntley maps could not and did not give "constructive notice" to the Sohns of the purported 1991 acceptance.

The argument that the Sohns should somehow have known about the purported, but undisclosed acceptance which occurred eleven years after the recording of the Bishop and Huntley maps, is patently absurd. The only way they could have known would have been to manually inspect every single document recorded by the Mariposa County recorder between 1980 and 1999 on the outside chance that, at some time during the nineteen years since the recording of the Bishop and Huntley maps, the County had recorded some action relevant to but not noted on those maps. There is nothing in the Bishop or Huntley maps which gave notice, or even hinted at any such action, and nothing in law or logic which compels such an investigation.

The County suggests that its 2004 letter to the Sohns indicating that it had accepted the road easement created by recorded parcel map recorded in Book 17 of Parcel Maps, at Page 10 (referring, to the Bishop map), was sufficient to put the Sohn's on inquiry notice that the County's acceptance was invalid. Nonsense. The Sohn's reasonably relied on the information provided to them by the official government agency charged with regulating parcel maps and dedications. They had no reason to doubt the truthfulness of the County's answer and thus no reason to investigate further at that time. They remained unaware that the County had falsely represented the status of the dedication until 2015.

For these reasons, the appellate court's conclusion that the Bishop and Huntley maps gave the Sohns constructive notice of the County's action eleven years later, is absolutely wrong.

### 2. The petitioners never had constructive notice that the County engaged in an intentional "4 x 4" scheme to circumvent the SMA until 2016

The Court of Appeal found that both of petitioners' proposed amended claims were time-barred on the theory that when they acquired their property in 1999, they had constructive notice of the Bishop and Huntley maps which disclosed that Bishop's original property was apportioned into seven parcels of roughly equivalent size. The critical error in this analysis is that although the petitioners were given constructive notice of the Bishop subdivision and of the Huntley subdivision, on their face, there was nothing improper or suspicious about the two distinct subdivisions. These maps did not give the Sohns constructive notice that a subdivision by one owner, followed by a subdivision of a portion of the property by a subsequent purchaser, was part of a larger, ongoing, County-approved scheme to circumvent the SMA. It was not until the petitioners learned, in 2016, that the County had approved many dozens of similar two-stage subdivisions, that the intentional and long-term nature of the scheme became apparent.

For these reasons, the appellate court's conclusion that the Bishop and Huntley maps gave the Sohns' constructive notice of the County's participation

in an intentional and long-term scheme to circumvent the SMA, is absolutely wrong.

### 3. The respondents did not raise a statute of limitations defense in their written demurrer, and even if they had, the point is not relevant here

The County does not dispute that in its written demurrer to the plaintiff's FAC, it did not raise a statute of limitations defense as to the relevant third cause of action (presumably because the alleged violation occurred less than two years before the filing of the complaint), although it did raise a statute of limitations defense as to some other causes of action which are not at issue here. Note that in the partial reporters' transcript attached to the County's opposition brief, the County's attorney, Mr. Cardella, specifically argues that the fourth cause of action (alleging a different civil rights violation which is not relevant here), is time barred**.** (Resp.App. 41).

In any event, whether or not the statute of limitations defense was raised in the trial court is not relevant here. What is relevant is whether the appellate court erred in finding that petitioners' claim for violation of civil rights as alleged in the third cause of action was time-barred. It did.

## C. The underlying claims are meritorious

Preliminarily, it is important to note that the County now concedes, for the first time, that it "neither expressly accepted nor expressly rejected the

offers of dedication when it approved the Bishop and Huntley Maps in 1980." (Resp. Brief, p. 28). Nevertheless, it asserts that the failure to expressly accept the offers constitutes a passive "rejection" which results in the offers remaining open under the SMA. This argument ignores (again), the relevant statutes which specifically require the decision to "accept, accept subject to improvements, or reject any dedication to be recorded on the final map prior to or concurrent with the filing of the final parcel map. (Govt. Code §§66440 and 66447). Neither the Bishop nor the Huntley map bears any such recording or notation.

The County relies instead on several cases which hold that, under the SMA, a rejected offer of dedication remains open for later acceptance. (*Stump v. Cornell Const. Co.* (1946) 29 Cal.2d 448, *Sacramento v. Jensen* (1956) 146 Cal.App.2d 114, *County of Orange v. Cole* (1950) 96 Cal.App.2d 163 and *Ratchford v. County of Sonoma* (1972) 22 Cal.App.3d 1056). But, as is discussed in detail in the Petition at pages 14-21, in every one of these cases, there was an express rejection of the offer; none of them involved the type of "passive"rejection which allegedly occurred here. Moreover, as is discussed above, the County literally ignores the statutes which require a rejection of an offer to be recorded on the final parcel map at the time of its acceptance.

For these reasons, the Sohns' claim that the County never validly accepted the offers of dedication in the Huntley and Bishop maps, is meritorious.

## CONCLUSION

Review by this court is warranted because the issues presented are of significant public importance and interest. The alleged conduct by the County of Mariposa involves serious violations of due process and unreasonable seizure of property under color of law which have been ongoing for many years and which negatively impact not only these plaintiffs, but potentially thousands of other residents of Mariposa County.

For all the foregoing reasons, plaintiffs respectfully request this court to grant certiorari.

Respectfully submitted,

Janice R. Mazur
*Counsel of Record*
MAZUR & MAZUR, LLC
13465 Camino Canada
No. 106-103
El Cajon, California 92021
(800) 383-5002
appealslawyer@aol.com

*Counsel for Petitioners*
Daniel and Juliet Sohn