

No. 20-933

SUPREME COURT OF THE UNITED
STATES

In re JACK R. FINNEGAN, Petitioner

v.

COURT OF APPEALS, Respondent

PETITION FOR WRIT OF MANDAMUS
OR OTHER APPROPRIATE RELIEF
APPELLATE CASE NO. 19-56360
DISTRICT COURT CASE NO. 8:19-cv-02110-JLS-

Jack R. Finnegan
Counsel of Record
871 Avenida Acapulco
San Clemente, CA 92672
949-492-3837

ORIGINAL

QUESTIONS PRESENTED FOR REVIEW

The courts have no authority to arbitrarily impose a misapplication of a legal doctrine to an action in equity. This elliptical action leads to incorrect results in classification of actions. None of the extraordinary powers of a court of equity are required in order to give relief sought. In classifying an action as legal or equitable, the court should look to its substance, i.e. to the nature of the right involved and the demand for remedy sought.

Rights are such as belonging to every citizen of the United States by the United States Constitution.

Nowhere in the document filed with the District court, Request For An Injunction, Pursuant to 28 USC §§1367(a), 1657(a), 1746, and FRCP Rule 65(d) and Applicable Provisions of Rule 52(a)(b)(c), was a demand for damages only equitable relief was stated.

The Appellate Memorandum apparently was conceived upon bias and prejudice, as if to say that *acting for oneself*, somehow diminishes the United States or California Constitutional guarantees.

Was Petitioner denied under the Equal Protection Clause, the 14th Amendment guarantee that the government must treat a person or class of persons the same as other persons or classes in like circumstances?

The ground for equitable relief among others is intrinsic and extrinsic fraud by preventing a fair adversary proceeding, which cannot be enforced. *See, Goldberg v. Kelly*, 397 U.S. 254 (1970); *United States v. Throckmorton* (1878) 98 U.S. 61, 25 L.Ed. 93.

LIST OF PROCEEDINGS

United State District Court, of Equity Jurisdiction, Case No. 8:19-cv-02110-JLS, Request for Injunction, 28 USC §§1367(a), 1657(a), and 1746, FRCP 65(d), and applicable provisions of Rule 52(a)(b)(c). Date of Opinion, November 18, 2019.

United State Court of Appeals, for the Ninth Circuit, 19-56360, City of Dana Point, Memorandum, Date of Order, November 3, 2020.

TABLE OF CONTENTS

Question Presented	i
List of Proceedings	ii
Table of Contents	ii
Table of Authorities	iv
Basis of Jurisdiction	vi
Constitutional, Statutory Provisions	vi
Federal Questions	vi
Reason for Granting the Writ	viii
Statement of Issues	1
Conclusion	13
Prayer	15
Verification	16
Certificate of Compliance	16

TABLE OF AUTHORITIES UNITED STATES CONSTITUTION

United States Constitution	vi, vii, ix, 1, 2, 12, 13,
Article I, Section 10[1]	1
Article III, Section 2[1]	4
Article III, Section 2[2]	1
Article VI, Section [2]	13

Fourth Amendment	13
Fifth Amendment i, vi, viii, 1, 2, 3, 4, 6, 9, 10, 15	
Sixth Amendment	12
Ninth Amendment	12
Fourteenth Amendment i, vi, viii, 3, 8, 10, 15	

CALIFORNIA CONSTITUTION

California Constitution	ix, 3, 12, 15
Article 1 §1	10, 12
Article 1 §3(b)(2)	12
Article 1 §3(b)(4)	10, 12
Article 1 §4	vi, 10
Article 1 §7(a)	vi, 10, 12
Article 1 §7(b)	vi, 12
Article 1 §9	10, 12
Article 1 §13	vi, 10
Article 1 §15	10
Article 1 §19(a)	vi, 10, 12
Article 1 §19(c)	12
Article 1 §19(e)(3)	vi, 12
Article 1 §19(b)	vi, 10, 12
Article 1 §24	vi, 12
Article 1 §26	vi, 10, 12
Article 1 §28(e)	10, 12
Article 1 §28(f)	10, 12
Article 3 §1	10, 12
Article 4 §16(a)	12
Article 4 §16(b)	12
Article 6 §13	10, 12
Article 11 §7	12
Article 11 §13	12

TABLE OF AUTHORITIES, CASES

<i>Armstrong v. United States</i> , 364 U.S. 40, 49 (1960) (Just Compensation)	4, 8
<i>Berman v. Parker</i> , 384 U.S. 26 (1954) (Public Use)	9
<i>Bogart v. Chapell</i> , 396 F.3d 548, 555 (4 th Cir. 2005) (Clear legal error)	10
<i>Central Vermont Pub. Serv. Corp., v. Herbert</i> , 341 F3d 186, 190 (2 nd Cir. (2003) (Clear usurpation of judicial power)	10
<i>Cole v. LaGrange</i> , 113 U.S. 1, 8 (1885) (Public Use)	5
<i>Continental Gas Co., v. Howard</i> , 775 F.2d 876 (7 th Cir. 1985), (Real Parties)	11
<i>Dolan v. City of Tigard</i> , 512 U.S. 374 (1994) (Taking)	9
<i>FCC v. Beach Communications Inc.</i> , 508 U.S. 307, 313-314 (1993) (Due Process and Equal Protection)	9
<i>Ferguson</i> , 852 P2d at 207 (Direct Invasion)	8
<i>First English Evangelical Lutheran Church v. County of Los Angeles</i> , 482 U.S. 304 (1987) (Due Process)	9
<i>Frothingham v. Mellon</i> , 262 U.S. 447 (1923), (Jurisdiction)	3, 10
<i>Goldberg v. Kelly</i> , 397 U.S. 254 (1970) (Trial type hearings)	i, 1, 12
<i>Gonzalez V. Crosby</i> , U.S. 125 S. Ct. 2641, 2646 L.Ed. 2d. (2005) (Exception To Finality)	12
<i>Gonzales v. Raich</i> , [citation omitted] (Taking)	3
<i>Hawaii Housing Authority v. Midkiff</i> , 467 U.S. 229, 241, (1984) (Public Use)	9

<i>Henry v. Mississippi</i> , 379 U.S. 443 (1965)	14
<i>In re Jessup</i> , (1889) 81 C. 408, 21 P. 976, 22 P. 742, 22 P. 1028. (Errors of law)	11
<i>Jacobs v. United States</i> , 290 U.S. 13 (1933), quoted in, <i>Cotton Land Co. v. United States</i> , 109 Ct. Cl. 816 (1948) (Taking)	2
<i>Marbury v. Madison</i> , 1 Cranch 137, 174 (1803) (Public Use)	5
<i>Missouri Pacific R. Co. v. Nebraska</i> , 164 U.S. 403, 417 (1896) (Public Use)	5
<i>Monongahela Nav. Co. v. United States</i> , 148 U.S. 312, 325 (1893) (Just Compensation)	4
<i>Mulger v. Kansas</i> , 123 U.S. 623 (1887)	8
<i>Muskrat v. United States</i> , 219 U.S. 346 (1911) (Real Party in Interest)	8
<i>Myers v. United States</i> , 272 U.S. 52, 151 (1926) (Public Use)	5
<i>Palazzolo v. Rhode Island</i> , 533 U.S. 606 (2001) (Ripe for Review)	9
<i>Sabri v. United States</i> , 541 U.S. 600, 613 (2004) (Taking)	3
<i>San Diego Gas & Electric Co. v. City of San Diego</i> , 450 U.S. 621, 638 n.2 (1981) (Taking)	8
<i>Servants of Paraclete v. Does</i> , 204 F.3d 1005, 1012 (10 th Cir. 2000) (Misunderstood controlling law)	11
<i>Thompson v. Consolidated Gas Util. Corp.</i> , 300 U.S. 55, 80 (1937) (Public Use)	5
<i>United States v. Clarke</i> , 445 U.S. 253, 257 (1980) (Taking)	8
<i>United States v. Cress</i> , 243 U.S. 316, 328, 37 S. Ct. 380, 385 (Direct Invasion)	8
<i>United States v. Throckmorton</i> (1878) 98 U.S. 61, 25 L. Ed. 93 (Jurisdiction)	i, 1, 12

<i>Wellenkamp v. Bank of America</i> , 21 Cal. 3d 043, 947, 582 P. 2d 970, 972 (1978), (Must plead facts)	11
<i>Williams v. Georgia</i> , 349 U.S. 375, 399 (1955)	
<i>Williamson v. Lee Optical of Okla., Inc.</i> , 348 U.S. 483 (1955) (Due Process and Equal Protection)	9
<i>Yee v. Escondido</i> , 112 S. Ct. 1522 (1992) (Taking)	3
28 USC 1651(a)	v
28 USC 1652	10
California Civil Code, 3422(1)(2)(3) & 3482	12, 15
California Code of Civil Proceed., 526(a)(1)(2)	12

BASIS OF JURISDICTION

The basis of jurisdiction issuance by the Court of an extraordinary writ is authorized by Article III, Section 2[1], 28 USC §§1292(a)(1), and 1651(a).

CONSTITUTION STATUTORY PROVISIONS

Fifth Amendment, , Deprived of Property, Due Process of Law, Property taken for public use without just compensation.

Fourteenth Amendment, No State shall make or enforce any law which shall abridge the privileges or immunities, life, liberty, or property without due process of law, nor deny equal protection of the laws.

CALIFORNIA CONSTITUTION

Article 1 §4, deprived of property without due process of law.

Article 1 §7(a), Due process or equal protect of laws.

Article 1 §7(b), Invidious Discrimination.

Article 1 §13, Unreasonable seizures.

Article 1 §19(a), Private property may not be taken, without compensation, ascertained by a jury.

Article 1 §19(b), Eminent domain, owner occupied, for the purpose of conveying it to a private person.

Article 1 §19(e)(3), Owner occupied residence includes independent living facilities.

Article 1 §24, Rights guaranteed, not dependent on the United States Constitution.

Article 1 §26, These Provisions are mandatory and prohibitory.

FEDERAL QUESTIONS RAISED

The Federal question of the United States Constitution, and Federal Statutes were raised in each and every court proceeding by Motions, Opening Briefs, and Reply Briefs.

REASON FOR GRANTING THE WRIT

The decisions by the lower courts in the unsupportable wisdom of the departure of established Constitutional guarantees and laws established by the United States Constitution and United States Supreme Court, and contributed to the irreparable injury caused by **Taking**, and the miscarriage of justice.

Published decisions has precedential effect, pursuant to the Doctrine of Principles of law. Mandate will lie where it appears judicial discretion could be exercised in only one way, and where the Appellate Court is under a duty to act in a particular way but refuses to do so and where the facts support only one decision. A writ of mandate issues to correct an abuse of discretion or compel the performance of a duty. There is no other adequate remedy in the ordinary course of law.

This petition involves one or more questions of exceptional importance, the panel's decision conflicts with the authoritative guarantees of the United States Constitution and that of published decisions of the United States Supreme Court and every other United States Court of Appeals that has addressed the issue.

It is necessary to resolve this issue promptly, because it constitutes exceptional circumstances warranting writ review, and to grant immediate writ review in the interest of decided law. The Official Record supports the substantial evidence of the **Taking**, and the sale to another private person.

Interests comprehended within meaning of either "liberty" or "property" under procedural

guarantees of the due process clause of the Fifth and Fourteenth Amendment include interests that are recognized and protected by state law, and interests guaranteed in one of the provisions of the Bill of Rights which have been incorporated into the Fifth Amendment; "nor be deprived of life, liberty, or property, without due process of law, nor shall private property be taken for public use, without just compensation." See, *Paul v. Davis*, 424 U. S. 693, 47 S. Ct. 1155, 32 L. Ed. 2d 405 (1976).

The self-enforcing desistance of Article III, Section 2[1], authorized "The Judicial Power shall extend to all Cases, in law and Equity, arising under this Constitution, the laws of the United States", the principles of federalism still have weight. See, *Rizzo v. Goode*, 423 U.S. 362, 46 S. Ct. 598, 40 L. Ed. 2d 561 (1976).

Extraordinary circumstances justify federal judicial intervention exist where there is a threat of irreparable injury which is both great and immediate. See, *Mitchum v. Foster*, 407 U. S. 225, 92 S. Ct. 2151, 32 L. Ed. 2d 705 (1972). Where there is a showing of bad faith or harassment by state officials, or where the commencement and carry out of a legal action has been undertaken without hope of obtaining a valid judicially sound result where the proceeding is flagrantly and patently violative of expressed constitutional prohibitions, or where there are other extraordinary circumstances in which the necessary irreparable injury can be shown. *Kugler v. Helfant*, 407 U. S. 117, 95 S. Ct. 1524, 44 L. Ed. 2d 15 (1975). *Middlesex County Ethics Committee v. Garden State Bar Ass'n* 457 U.S. 423, 102 S. Ct. 2515, 73 L. Ed. 2d 116 (1982).

The Petition for Writ of Mandamus should be granted because the illegal Order involves several clauses of violations of the United States Constitution, and several clauses of violations of the California Constitution and several violations of Federal and California State Statutes. This was a clear case of Government Overreaching, intrinsic and extrinsic fraud, and **an illegal taking of personal and real property**, and substantial denial in the interest of justice. These are compelling reasons because the Orders decided important federal questions and has departed from accepted and usual course of judicial procedure as to call for an exercise of this Courts supervisory power, to correct a miscarriage of justice.

The granting of the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances of Constitutional guarantees being violated, warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court.

Jack R. Finnegan purchased the subject property in 1963, designed the home, (Licensed Architect), built the home, permit #B05994 and #B00126 (Licensed General Contractor), prior to the City ever existing, (26 years), made timely mortgage and property tax payments for over 52 years, had the property illegally taken on 12/1/14 without one cent being deposited with the court and the property was sold to a private individual, on 3/23/17 a violation of Federal and State Constitutions.

MAY IT PLEASE THE COURT

STATEMENT OF ISSUE

Was Petitioner denied his historical basis and inalienable right to decide matters in equity?

An injunction is a typical form of equitable relief sought for an action arising out of a tort against violations of personal rights established by the United States Constitution,

The United States Constitution guarantees the rights, power, privilege, or immunity and Due Process and Equal Protection.

These Rights are such as belonging to every citizen of the United States by the 4th, 5TH, 9th, and 14TH, Amendments, prior to the infringement of individuals' rights and entitlements? Notable, in *Goldberg v. Kelly*, 397 U.S. 254 (1970).

The ground for equitable relief among others is fraud by preventing a fair adversary proceeding, which cannot be enforced. *United States v. Throckmorton* (1878) 98 U. S. 61, 25 L. Ed. 93.

Was Petitioner (hereinafter Finnegan) denied his United States Constitutional rights under Article I, Section 10[1], Article III, Section 1, Article III, Section 2[1], and Article III, Section 2[2] of the United States Constitution as it relates to this proceeding? The simple fact is the City violated several fundamental rights, (The Public Use and the Taking Clauses) of both Constitutions, took private property from Finnegan, and gave it to another private party, and took not legally justified unjust enrichment.

The Taking clause is a prohibition, not a grant of power, the Constitutions both the United States and California does not expressly grant the government the power to take property for any purpose whatsoever, and thereby invades individuals' traditional rights in real and personal property, "To lay hold of; to gain or receive into possession; to seize; to deprive one of the use or possession of; to assume ownership is a Taking."

The Constitution provides that a man's property shall not be taken for public uses without just compensation. Fifth Amendment of the United States Constitution. Property may be deemed "taken" within the meaning of these constitutional provisions when it is totally destroyed or rendered valueless, or in connection with an actual taking or when there is interference with the use of property to owner's prejudice, with resulting diminution in value thereof. A "Taking" has occurred when an entity clothed with power of eminent domain substantially deprives owner of use and enjoyment of his property "Taking" of property within the Constitution is not restricted to mere change of physical possession but includes permanent or temporary deprivation of use to owner if such deprivation amounts to abridgement by reason of state of lawful rights of individual to possession, use or enjoyment of his land.

It is well settled that all Taking claims are under the Constitution. See, *Jacobs v. United States*, 290 U.S. 13 (1933), *quoted in, Cotton Land Co. v. United States*, 109 Ct. Cl. 816 (1948).

The Government may take property only when necessary and proper to the exercise of an expressly enumerated power. For a law to be within the Necessary and Proper Clause, it must be an "obvious, simple, and direct relation" to an exercise of Congress enumerated powers, *Sabri v. United States*, 541 U.S. 600, 613 (2004), and must not "subvert basic principles of constitutional design, *Gonzales v. Raich*, [citation omitted] in other words, a taking is permissible under the Necessary and Proper Clause only if it serves a valid public purpose. See, *Yee v. Escondido*, 112 S. Ct. 1522 (1992) The Taking practice largely bears out this understanding of the Public Use Clause of the Fifth Amendment (adopted in 1868) and the California Constitution (adopted in May 7, 1879) Article 1, Section 19(a) and 19(b), and the limits of the Fourteenth Amendment of (adopted in 1868).

In *Frothingham v. Mellon*, 262 U.S. 447 (1923), a unanimous Supreme Court held that the proceeding "must be disposed of for want of jurisdiction" because the City "has no such interest in the subject-matter, nor is any such injury inflicted or threatened, as will enable the City to sue".

Chief Justice Burger added: "To permit a petition who has no concrete injury to require a court to rule on important constitutional issues in the abstract would create the potential for abuse of the judicial process, distort the role of the Judiciary. Though citizens might allege "an arguable conflict with some limitation of the Constitution, it can only be a matter of speculation whether the claimed

violation has caused concrete injury to the particular complainant." The fact that there was genuine adverseness between the parties, assuring able arguments, was not enough to justify recognition of standing. Justice Stewart added, "Standing is not found wanting because an injury has been suffered by many, but rather because none of the petitioners has alleged the sort of direct, palpable injury required for standing under Article III of the Constitution. Justice Douglas emphasized two ingredients of standing: (1) The Article III requirement that the challenged action caused the petitioner "injury in fact" They were found to lack standing —because theirs was not a "legal injury."

It has long been accepted that the sovereign may not take the property of "A" for the sole purpose of transferring it to another private party "B", even though "A" is paid just compensation.

To reason that the incidental public benefits from the subsequent ordinary use of private property render **Taking** for public use, is to wash out any distinction between private and public use of property, and thereby effectively to delete the words for public use from the **Taking Clause of the Fifth Amendment**. The **Taking** must be for a public use and just compensation must be paid to the owner.

The just compensation requirement spreads the costs of condemnations and thus prevents the public from loading upon one individual more than his just share of the burdens of government. *Monongahela Nav. Co. v. United States*, 148 U.S. 312, 325 (1893); see also *Armstrong v. United States*, 364 U.S. 40, 49 (1960). The public use requirement, in

turn, imposes a more basic limitation, circumscribing the very scope of the eminent domain power: Government may compel an individual to forfeit his property for the public's use, but not for the benefit of another private person.

A purely private purpose scrutiny of the public use requirement; it would serve no legitimate purpose of government and would thus be void. Court cases have repeatedly stated that one person's property may not be taken for the benefit of another private person without a justifying public purpose, even though compensation be paid. *Thompson v. Consolidated Gas Util. Corp.*, 300 U.S. 55, 80 (1937); see also *Missouri Pacific R. Co. v. Nebraska*, 164 U.S. 403, 417 (1896).

Marbury v. Madison, 1 Cranch 137, 174 (1803); *Myers v. United States*, 272 U.S. 52, 151 (1926); *Cole v. LaGrange*, 113 U.S. 1, 8 (1885). When the government takes property and gives it to a private individual, and the public has no right to use the property, it strains language to say that the public is employing the property. The term public use then, means that either the government or its citizens as a whole must actually employ the taken property. The Constitution's text, in short, suggests that the Takings Clause authorizes the taking of property only if the public has a right to employ it, not if the public realizes any conceivable benefit from the taking. The Public Use Clause, in short, embodied the Framers' understanding that property is a natural, fundamental right, prohibiting the government from taking property from A. and giving it to B.

It is equally clear a City may transfer property from one private party to another if future "use by the

public" is the purpose of the **Taking**. The City would be forbidden from taking Finnegan's property for the purpose of conferring a private benefit on a particular private party; it would serve no legitimate purpose of government and would thus be void. Nor would the City be allowed to take property under the mere pretext of a public purpose, when its actual purpose was to bestow a private benefit and the **Taking** was an illegitimate purpose. Other polar propositions encompassing regulations that compel the property owner to suffer a physical invasion of his property, no matter how minute the intrusion, and no matter how weighty the public purpose behind it, we have required compensation. The other polar propositions, is where regulation denies all economically beneficial or productive use of the property. The Fifth Amendment is violated when regulation "does not substantially advance legitimate state interests or denies an economically viable use of his property."

The Federal Courts frequently expressed belief that when the owner of real property has been called upon to sacrifice all economical beneficial use, he has suffered a **Taking**.

Where permanent physical occupation of property is concerned, the Courts have refused to allow government to decree it anew (without compensation), no matter how weighty the asserted public interest involved similar treatment must be accorded confiscatory actions that prohibit all economically beneficial use of property. Any limitation so severe cannot be decreed (without compensation). A law or decree with such an effect must, do no more than duplicate the result that could have been achieved in the courts.

The total Taking will ordinarily entail (as the application of state nuisance law ordinarily entails) analysis of the degree of harm to adjacent private property. The fact that a particular use has long been engaged in by similarly situated owners ordinarily imports a lack of common-law prohibition, so also does the fact that other landowners, similarly situated, are permitted to continue the use, denied to Finnegan. The City must identify background principles of nuisance and property law that prohibit the uses in which the property is found. Only on this showing can the City fairly claim the act is harmful or injurious to its citizens or the community and is taking nothing, and that it is not relying on an implausible state trial court finding. The court has the power to decide a case that turns on an erroneous finding unless the use prohibited by the City is a background common-law nuisance or property principle. The City may not require a property owner to give up a constitutional right, when no legitimate state interest exist. If the City cannot demonstrate that its action is directly proportional to the specifically legitimate state interest, the action becomes a veiled exercise of the power of eminent domain and a confiscation of private property behind the defense of police regulations.

The distinction must be made between an appropriate exercise of police power and an improper exercise of a Taking is whether the requirement has some reasonable relationship or nexus to the use to which the property is being made or is merely being used as an excuse as an exercise for taking property. The City must make some sort of individualized determination that the action is

justified while Finnegan is defending hearth and home against the king's intrusion.

Taking of the entire parcel denied all viable economic and productive use of property gives rise to an unqualified obligation to compensate for value of property, whenever government physically takes property. No subsequent action by government can relieve it of the duty to provide just compensation.

Interest in protecting individual property owners from bearing public burdens which, in all fairness and justice, should be borne by the public as a whole. *Armstrong v. United States*, 364 U.S. 40 [438 U.S. 104, 124 49] (1960).

Due Process Clause of the 14th Amendment bars state governments from depriving people of their property without due process of law. The first Clause prevents government from depriving a person of property without due process of law. It applies to any deprivation of property, not just takings for public purposes. The second prevents the government from taking private property without just compensation. The due process Clause of the 14th, *Mugler v. Kansas*, 123 U.S. 623 (1887).

They were the product of a direct invasion of Finnegan's domain as stated in *United States v. Cress*, 243 U.S. 316, 328, 37 S. Ct. 380, 385; *Ferguson*, 852 P2d at 207 it is the character of the invasion. Taking (or damaging) of property without just compensation. *San Diego Gas & Electric Co. v. City of San Diego*, 450 U.S. 621, 638 n.2 (1981), *United States v. Clarke*, 445 U.S. 253, 257 (1980).

We are asked to hold that state courts and state legislatures have deprived their own citizens of life, liberty, and property without due process of law. *First*

English Evangelical Lutheran Church v. County of Los Angeles, 482 U.S. 304 (1987).

The Supreme Court in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), that a Taking had occurred when the City did not show that any reasonable relationship for public access for the Taking.

The Supreme Court in *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001), held that a Taking Claim can be ripe for review if the owner did everything, he could reasonable and necessary to avoid the loss, and how much use and value may be destroyed before Just Compensation is due. The Taking Clause is to prevent the government from "forcing some people alone to bear public burdens which, in all fairness and justice, should be bourn by the public as a whole.

The United States Supreme Court has established a number of tests under which a state regulation constitutes a Taking per se. These are physical invasion denial of all economical viable private property uses among others.

The Public Use Clause of the United States Constitution, Fifth Amendment, and stated in *Hawaii Housing Authority v. Midkiff*, 467 U.S. 229, 241, (1984), see also *Berman v. Parker*, 384 U.S. 26 (1954). This differential standard of review echoes the rational-basis test used to review economic regulation under the Due Process and Equal Protection Clauses, see e.g. *FCC v. Beach Communications Inc.*, 508 U.S. 307, 313-314 (1993); *Williamson v. Lee Optical of Okla., Inc.*, 348 U.S. 483 (1955). A court confronted with a plausible accusation of impermissible favoritism to private parties must treat the objection

as a serious one and review the record. Undetected impermissible favoritism of private parties is so acute that a presumption of invalidity is warranted under the Public Use Clause.

Legal missteps of the City that leads to the conclusion this court must reach, is that the **Taking** was a violation of the United States Fifth and Fourteenth Amendments, and pursuant to 28 USC §1652, the California Constitutions of Article 1 Section 1, Article 1, Section 3(b)(4), Article 1 Section 4, Article 1, Section 7(a), Article 1 Section 9, Article 1, Section 13, Article 1 Section 15, Article 1, Section 19(a), Article 1 Section 19(b), Article 1, Section 26, Article 1 Section 28(e), Article 1, Section 28(f), Article 3 Section 1, Article 6, Section 13.

FACT & LAW. The Official Record demonstrates that no 30-day Notice was ever sent or filed in any court, without this 30-day Notice being given to Finnegan, there can be no declared nuisance. *Bogart v. Chapell*, 396 F.3d 548, 555 (4th Cir. 2005) [Clear legal error].

FACT. The Official Record demonstrates that there was no condition of disrepair, or substandard, the house and the property located at 12546 Manzanita Drive, Dana Point, has always been maintained in perfect condition. *Central Vermont Pub. Serv. Corp., v. Herbert*, 341 F3d 186, 190 (2nd Cir. (2003) [Clear usurpation of judicial power]. The Official Record demonstrates that there was no condition harmful to health, or indecent or offensive to the senses, or a loss of enjoyment of life.

FACT & LAW. The Official Record demonstrates that when the City filed the Petition

against Finnegan and not the Property, the City waived its right to assert a nuisance or other police power. *Continental Cas Co., v. Howard*, 775 F.2d 876 (7th Cir. 1985), [Real Parties]

FACT & LAW. The Official Record demonstrates that the City was not harmed, See, *Frothingham v. Mellon*.

FACT & LAW. The Official Record demonstrates that no offensive situation or activity met the legal definition of a nuisance. *In re Jessup*, (1889) 81 C. 408, 21 P. 976, 22 P. 742, 22 P. 1028. [Errors of law].

FACT & LAW. The Official Record demonstrates that unsubstantiated alleged accusations were never filed in any court of law, or adjudicated in any court of law. *Wellenkamp v. Bank of America*, 21 Cal. 3d 043, 947, 582 P. 2d 970, 972 (1978), [Must plead facts].

FACT & LAW. The Official Record demonstrates that there was no perceptible injury caused by Finnegan, and allegations of perceptible injury cannot create a cause of action where none exists, that expansion of the law in this area would have the undesired effect of fostering ill will and a proliferation of litigation. In the absence of an unlawful act, a landowner's right to use his property lawfully is a fundamental precept of a free society this would clearly extend the statute to absurd proportions. *Servants of Paraclete v. Does*, 204 F.3d 1005, 1012 (10th Cir, 2000) [Misunderstood controlling law].

FACT & LAW. The Official Record demonstrates that the City never had no right, title, estate, or interest in, or to the aforementioned real property, or any part or portion thereof.

FACT & LAW. The Official Record demonstrates that there was no injunction filed which is expressly authorized where it appears that a party is doing an act that violates the rights of another party. The City could not provide evidence pursuant to Cal. C.C. §3422(1)(2)(3), or CCP §526(a)(1)(2), that an injunction was necessary, or that the City was entitled to any relief. *United States v. Throckmorton*, (1878) 98 U.S.61, 25 L. Ed. 93.

FACT & LAW. The Official Record demonstrates that there was a violation of the Sixth Amendment of the United States Constitution and Articles 1 Section 15, 24, 26, and 28(f), of the California Constitution. *Gonzalez V. Crosby*, U.S. 125 S. Ct. 2641, 2646 L. Ed. 2d. (2005), [Exception To finality].

FACT & LAW. The Official Record demonstrates that there was a violation of the Ninth Amendment of the United States Constitution and Articles 1 Section 1, 3(b)(2), 3(b)(4), 4, 7(a), 7(b), 9, 19(a), 19(b), 19(c), 19(e)(3), 24, 26, 28(e), 28(f), Article 3, Section 1, Article 4, Sections 16(a), 16(b), Article 6, Section 13, Article 11, and Sections 7, 13. of the California Constitution. *Goldberg v. Kelly*, 397 U.S. 254 (1970) [Trial type hearings].

CONCLUSION

Where the validity of a State statute is sustaining a ruling repugnant to the United States Constitutions and laws, and California Constitution, or where any title, right, privilege or immunity is specially set up or claimed under the Constitution, treaties or statutes of, or commission held or authority exercised under, the United States, and the decision is in favor of its validity. When the state courts nevertheless enforced its action, its action constituted "an affirmation of its validity when so applied. United States Constitution, Article VI, Section [2], Supremacy Clause.

Jurisdiction was broadened in 1914, when review was for the first time extended to assurance of greater uniformity in federal law interpretation, not simply assurance of federal supremacy, thus became a major goal of the review statute.

The federal power over state judgments is to correct them to the extent that they incorrectly adjudge federal rights. United States Constitution, Fourth Amendment.

In constitutional litigation, the most common example of an independent and adequate state substantive ground is a state court ruling that a state ruling violates both the state and federal constitutions.

Justice Clark's dissent in *Williams v. Georgia*, 349 U.S. 375, 399 (1955), "A purported state ground is not independent and adequate in two instances. First, where the circumstances give rise to an inference that the state is guilty of an evasion—an interpretation of state law with the specific intent to deprive a litigant

of a federal right and where the state court decision lacked fair support in the state law. Second where the state law, throws such obstacles in the way of enforcement of federal rights that it must be struck down as unreasonably interfering with the vindication of such rights " In *Henry v. Mississippi*, 379 U.S. 443 (1965), suggested that state procedural grounds are subject to broader Supreme Court reexamination than state substantive grounds. Justice Brennan's majority opinion stated "that a litigant's procedural defaults in state proceedings do not prevent vindication of his federal rights unless the State's insistence on compliance with its procedural rules serves a legitimate state interest. In every case we must inquire whether the enforcement of a procedural forfeiture serves such an interest. If it does not, the state procedural rule ought not be permitted to bar vindication of important federal rights."

Where a state court has decided a federal question of substance not theretofore determined by this court, or has decided it in a way probably not in accord with applicable decisions of this court. Where a court of appeals has rendered a decision in conflict with another court of appeals on the same matter; or has decided an important question of federal law which has been settled by this court; or has decided a federal question in a way in conflict with applicable decisions of this court; or has so far departed from the accepted and usual course of judicial proceedings, or so far sanctioned such a departure by a lower court, as to call for an exercise of this court's power of supervision.

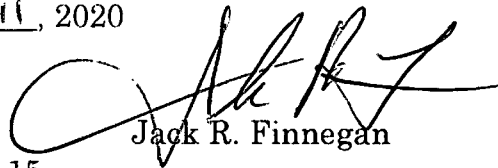
The City cannot state a cause of action for nuisance under California law, and does not give rise to a heightened duty of care, Cal. C.C. §3482, Acts Authorized by Law, therefore this court must find that the action by the City was a Taking.

Since the matter has been fully briefed, however, thereby demonstrating that there is absolutely no factual basis for a nuisance cause of action, and since no prejudice results to the City, this Court must find that the City violated the Fifth and Fourteenth Amendments, of the United States Constitution and numerous California Constitutional violations, and there was a Taking.

PRAYER

Writ of Mandamus should issue, that property at 25146 Manzanita Drive, Dana Point, be returned in the exact condition when Taken, free and clear of encumbrances, restitution of all property rights, all personal property be returned, California Prop. 13, be reinstated, the I.R.S. credit for sale of home be reinstated, the illegal placed fire hydrant be removed, all retaining walls that existed be replaced. All orders granted to the City, and others of any fees or costs be reversed. Expungement of the illegally placed Lien on the San Clemente property, of all lis pendens and expungement of all abstract judgments.

Dated: December 11, 2020


Jack R. Finnegan