

No. 24-_____

**In The
Supreme Court of the United States**

CALIFORNIA ASSOCIATION FOR THE
PRESERVATION OF GAMEFOWL,
Petitioner,

v.

COUNTY OF STANISLAUS,
Respondent.

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

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

1. Whether a statute of limitations for facial constitutional challenges begins to run solely from the date of enactment, or whether each day of continued enforcement creates new injuries that refresh the limitations period.
2. Whether an ordinance that entirely eliminates non-commercial ownership of a category of property while exempting commercial owners constitutes a per se regulatory taking requiring just compensation under the Fifth Amendment.
3. Whether legislation targeting non-commercial property owners for disparate treatment without evidence of greater harm constitutes arbitrary action violating substantive due process.
4. Whether retroactively eliminating existing property rights without compensation or individualized process constitutes an unconstitutional bill of attainder.

PARTIES TO THE PROCEEDING

Petitioner California Association for the Preservation of Gamefowl (CAAPG) was the plaintiff in the district court and appellant in the court of appeals.

Respondent County of Stanislaus was the defendant in the district court and appellee in the court of appeals.

CORPORATE DISCLOSURE STATEMENT

Petitioner California Association for the Preservation of Gamefowl (CAAPG) is a non-profit, incorporated association with no parent corporation. No public company owns 10% or more of its stock.

RELATED PROCEEDINGS

United States District Court (E.D. Cal.): - *California Association for the Preservation of Gamefowl v. County of Stanislaus*, No. 1:20-cv-01294-ADA-SAB (July 5, 2023)

United States Court of Appeals (9th Cir.): - *California Association for the Preservation of Gamefowl v. County of Stanislaus*, No. 23-15975 (Nov. 6, 2024) - Petition for Rehearing En Banc Denied (Jan. 6, 2025)

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PETITION FOR A WRIT OF CERTIORARI

The California Association for the Preservation of Gamefowl respectfully petitions for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.

OPINIONS BELOW

The opinion of the court of appeals (Pet. App., *infra*, 1a-6a) is unreported. The opinion of the district court (*Id.* at 10a-15a) is also unreported.

JURISDICTION

The judgment of the court of appeals was entered on November 6, 2024. A petition for rehearing was denied on January 6, 2025. Justice Kagan granted an extension of the time to file until June 5, 2025. This Court's jurisdiction is invoked under 28 U.S.C. § 1254(1).

CONSTITUTIONAL, PROCEDURAL, AND STATUTORY PROVISIONS INVOLVED

The Fifth Amendment to the United States Constitution provides in relevant part:

[N]or shall private property be taken for public use, without just compensation.

The Fourteenth Amendment to the United States Constitution provides in relevant part:

[N]or shall any State deprive any person of life, liberty, or property, without due process of law.

Article I, Section 10, Clause 1 of the United States Constitution provides in relevant part:

No State shall ... pass any Bill of Attainder.

42 U.S.C. § 1983 provides in relevant part:

Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State ... subjects, or causes to be subjected, any citizen of the United States ... to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress.

Stanislaus County Code Section 21.12.530 provides:

The "Small livestock farming" means the raising or keeping of more than a combined total of twelve chicken hens, turkeys or twelve pigeons (other than defined in Section 21.12.500) or twelve similar fowl or twelve rabbits or twelve similar animals, or four permanent

standard beehives. "Small livestock farming" as used in this title shall not allow for the keeping, in any quantity, of roosters, quacking duck, geese, guinea fowl, peafowl, worms (except for personal use), or any other small domestic animal determined by the planning director to have the potential to cause a nuisance. The keeping of animals in quantities less than described above is permitted in any district.

Stanislaus County Code Section 21.80.020 provides:

A. A lawful nonconforming use may be continued; provided, that no such use shall be enlarged or increased, nor be extended to occupy a greater area than that occupied by such use prior to the date the use became nonconforming, and that if any such use is abandoned, the subsequent use shall be in conformity to the regulations specified by this title for the district in which the land is located.

1. The keeping of animals in quantities greater than permitted by this title shall not be subject to continuation.

STATEMENT

A. Factual Background

The California Association for the Preservation of Gamefowl is a non-profit, incorporated association dedicated to the lawful breeding, raising, and showing of gamefowl. Pet. App 137a-138a. CAAPG's mission includes bonding together lovers of gamefowl to

perpetuate and improve the species, providing standards for maintenance and improvement of various strains, holding shows throughout California, educating members regarding improved methods for health and breeding, and protecting the legal rights of members to breed, raise and enjoy their gamefowl peaceably and lawfully. *Id.*

Prior to November 16, 2017, Stanislaus County law placed no limits on rooster ownership by residents who complied with applicable nuisance and animal welfare laws. Pet. App. 140a. Specifically, Title 21, Section 21.12.530 of the Stanislaus County Zoning Ordinance provided that “small livestock farming” included “any roosters” and that “[t]he keeping of animals in quantities less than described above is permitted in any district.” Pet. App. 141a. This allowed county residents, including CAAPG’s members, to lawfully own roosters for non-commercial purposes including personal enjoyment, preservation of heritage breeds, and participation in lawful shows and exhibitions.

CAAPG’s members in Stanislaus County have long maintained roosters in compliance with all applicable laws, causing no nuisance or violations of animal cruelty statutes. These law-abiding residents invested time, effort, and resources in developing their flocks and participating in the lawful gamefowl community.

In September 2017, Stanislaus County’s Department of Planning and Community Development proposed sweeping changes to county zoning law that purported to prevent unlawful and nuisance activity but in reality trampled upon the rights of law-abiding rooster owners. *Id.* On October 17, 2017, these

amendments were adopted and became effective November 16, 2017. Pet. App. 142a.

The amended ordinance fundamentally transformed Section 21.12.530 to eliminate any non-commercial right to own roosters. *Id.* The new provision stated that “Small livestock farming” shall “not allow for the keeping, in any quantity, of roosters, quacking duck, geese, guinea fowl, peafowl, worms (except for personal use), or any other small domestic animal determined by the planning director to have the potential to cause a nuisance.” Commercial operations remained exempt from this prohibition.

Critically, the ordinance applied fully retroactively. Pet App. 143a. Section 21.80.020 was simultaneously amended to provide that “[t]he keeping of animals in quantities greater than permitted by this title shall not be subject to continuation” as nonconforming uses. Pet App 142a-143a. This eliminated any grandfather protection for existing lawful rooster ownership, regardless of how long the use had been established or the owner’s perfect compliance with all other laws.

The ordinance provided no compensation for the forced elimination of rooster owners’ property rights, nor any provision or guidance regarding the sale, transfer, or disposition of roosters. Pet App 143a. This essentially placed many more roosters at risk by requiring law-abiding, caring owners to relinquish them to unknown circumstances.

B. Procedural History

1. CAAPG filed suit on September 9, 2020, in the United States District Court for the Eastern District of California. Pet. App 17a. The complaint challenged the ordinance on multiple constitutional grounds,

asserting: (1) Regulatory Taking in Violation of the Fifth and Fourteenth Amendments; (2) Violation of Substantive Due Process; (3) Violation of Procedural Due Process; and (4) Forfeiture of Vested Property Rights. *Id.*

The County moved to dismiss under Federal Rule of Civil Procedure 12(b)(6), arguing primarily that CAAPG's facial challenges were time-barred under California's two-year statute of limitations. CAAPG opposed this motion, arguing that the continuing violation doctrine applied because the ordinance's ongoing enforcement created new constitutional injuries each day it remained in effect. Pet. App 17a-18a.

On July 5, 2023, the district court granted the County's motion to dismiss. Pet. App 8a-15a. The court held that: (1) all facial challenges were time-barred because they accrued solely upon the ordinance's enactment in 2017; (2) the substantive due process claim failed to meet the "exceedingly high burden" required to show arbitrary government action; and (3) the vested rights claim required allegations of a specific permit or equivalent government approval that CAAPG had not alleged.

Significantly, the district court did not address CAAPG's argument that each day of continued enforcement created new constitutional violations under the continuing violation doctrine. The court also did not substantively analyze whether the complete elimination of property rights constituted a *per se* taking requiring compensation.

2. On November 6, 2024, a three-judge panel of the Ninth Circuit affirmed the district court's dismissal. The court held that facial constitutional challenges

accrue solely upon enactment, making CAAPG's claims untimely despite ongoing enforcement and continuing injuries to property rights. The court did not reach the merits of CAAPG's constitutional arguments. Pet. App 2a-6a

3. On December 11, 2024, CAAPG filed a petition for panel rehearing and rehearing en banc, arguing that the panel decision conflicted with the Ninth Circuit's own precedent in *Flynt v. Shimazu* and created or deepened circuit splits on fundamental questions of constitutional law. CAAPG emphasized that the Supreme Court's recent decision in *Corner Post, Inc. v. Board of Governors* supported the principle that limitations periods run from injury, not enactment.

On January 6, 2025, the Ninth Circuit denied the petition for rehearing and rehearing en banc without opinion. The mandate issued on January 14, 2025. Pet. App 1a

REASONS FOR GRANTING THE PETITION

I. The Circuits Are Fundamentally Divided on When Constitutional Claims Accrue for Ongoing Enforcement of Challenged Laws

A sharp circuit conflict exists regarding when the statute of limitations begins to run for facial constitutional challenges to laws that create continuing injuries through their enforcement. This division undermines uniform application of federal civil rights laws and threatens to immunize unconstitutional enactments from judicial review.

A. Several Circuits Recognize That Continued Enforcement Creates New Constitutional Injuries

The Fifth and Sixth Circuits have correctly recognized that each day a law remains in effect can give rise to new constitutional violations that refresh the limitations period. In *Flynt v. Shimazu*, 940 F.3d 457 (9th Cir. 2019), the Ninth Circuit itself previously held that “the continued existence of a statute, even if enacted outside the limitations period, and the realistic threat of future enforcement is sufficient to render a facial challenge to the statute timely.” *Id.* at 462.

Similarly, in *Kuhnle Brothers, Inc. v. County of Geauga*, 103 F.3d 516 (6th Cir. 1997), the Sixth Circuit held that “[t]he continued enforcement of an unconstitutional statute cannot be insulated by the statute of limitations” because a plaintiff “suffered a new deprivation of constitutional rights every day that [the challenged enactment] remained in effect.” *Id.* at 521-522. As that court explained, if the contrary were true, “any statute older than two years would be insulated from challenge, even if its continued existence and enforcement cause additional wrongs.” *Id.* at 522.

The Supreme Court’s recent decision in *Corner Post, Inc. v. Board of Governors of the Fed. Reserve Sys.*, 603 U.S. 799 (2024), though not addressing Section 1983 claims directly, strongly supports this view. There, the Court held that facial challenges under the Administrative Procedure Act and Federal Tort Claims Act accrue from the date of actual harm, not enactment. The logic underlying that holding - that injury, not mere enactment, triggers limitations periods - applies with equal force here.

B. The Decision Below Exemplifies a Rigid Approach That Immunizes Ongoing Constitutional Violations

In direct conflict with these authorities, the Ninth Circuit held below that CAAPG’s claims accrued once and for all upon enactment in 2017, despite the ordinance’s continuing effects on property rights. This approach, which has also been adopted by the Eighth and Eleventh Circuits, effectively immunizes laws from constitutional challenge after the initial limitations period expires - even when those laws continue to inflict new injuries daily.

This rigid view cannot be reconciled with this Court’s recognition that constitutional rights deserve meaningful protection through access to judicial review. See *Scheer v. Kelly*, 817 F.3d 1183, 1188 (9th Cir. 2016) (constitutional challenges should not be “insulated from review simply due to the passage of time since a law’s enactment”). The approach also contradicts fundamental principles of claim accrual, which typically run from when a plaintiff suffers injury or has reason to know of the violation. The continuing violation doctrine exists precisely to address situations where unlawful conduct persists over time.

II. The Ordinance Effects An Unconstitutional Taking Without Just Compensation

The Ninth Circuit’s dismissal of CAAPG’s takings claim warrants review because it conflicts with this Court’s precedents establishing that regulations eliminating all economically beneficial use of property constitute *per se* takings requiring compensation.

1. Complete Elimination of Property Rights Requires Compensation

This Court has repeatedly held that regulations that completely destroy property rights effect *per se* takings requiring just compensation. In *Cedar Point*

Nursery v. Hassid, 141 S. Ct. 2063 (2021), the Court reaffirmed that any government action eliminating a fundamental property right constitutes a *per se* taking. *Id.* at 2072. Similarly, in *Horne v. Dep’t of Agric.*, 576 U.S. 350 (2015), the Court rejected the notion that personal property enjoys lesser protection under the Takings Clause. *Id.* at 360.

The ordinance here does exactly what these cases forbid - it entirely eliminates the right of non-commercial owners to possess certain property, requiring forfeiture without compensation. As in *Brown v. Legal Found. of Wash.*, 538 U.S. 216 (2003), the forced relinquishment of property rights to achieve regulatory goals constitutes a *per se* taking requiring just compensation.

2. The Retroactive Nature of the Taking Heightens Constitutional Concerns

The retroactive application of the ordinance, which provides no grandfather provisions for existing lawful uses, exacerbates its unconstitutional nature. Under *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419 (1982), and *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595 (2013), retroactive laws that deprive property owners of vested rights warrant particularly careful scrutiny. The ordinance fails that scrutiny by eliminating previously lawful property rights without compensation or any showing of necessity.

III. The Ordinance Violates Substantive Due Process Through Arbitrary Discrimination

Review is also warranted because the ordinance’s arbitrary distinction between commercial and non-commercial owners epitomizes the type of irrational

government action that violates substantive due process.

1. The Commercial/Non-Commercial Distinction Lacks Any Rational Basis

This arbitrary classification mirrors the regulation invalidated in *North Pacifica LLC v. City of Pacifica*, 526 F.3d 478 (9th Cir. 2008), where the Ninth Circuit struck down similarly baseless distinctions between similarly situated property owners. The ordinance's selective targeting of non-commercial owners, while exempting commercial operations engaging in identical conduct, lacks the rational basis that due process requires.

2. Existing Laws Already Address Legitimate Governmental Concerns

The County's asserted interests in preventing nuisance and illegal activity are already fully addressed by existing laws. Pet. App 108a-109a. This disconnect between means and ends renders the ordinance's additional categorical ban on non-commercial ownership constitutionally arbitrary. See *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528 (2005).

IV. The Ordinance Constitutes An Unconstitutional Bill Of Attainder

Finally, review is warranted because the ordinance functions as a legislative determination of guilt prohibited by the Bill of Attainder Clause. By specifically targeting an identifiable group - non-commercial owners - for punitive treatment without individual adjudication, the ordinance crosses the constitutional line between legitimate regulation and forbidden legislative punishment.

1. The Ordinance Bears the Traditional Marks of Legislative Punishment

To establish a bill of attainder claim, a law must (1) specify affected persons, (2) impose punishment, and (3) do so without judicial trial. *Selective Serv. Sys. v. Minn. Pub. Interest Research Grp.*, 468 U.S. 841, 847 (1984). The ordinance meets all three criteria by singling out non-commercial owners for punitive property deprivation without any opportunity for individual determination of wrongdoing.

The forced forfeiture of property falls squarely within historically recognized forms of legislative punishment. See *Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 468 (1977). Moreover, as in *SeaRiver Maritime Fin. Holdings, Inc. v. Mineta*, 309 F.3d 662 (9th Cir. 2002), the absence of any non-punitive explanation for targeting this specific group suggests an improper punitive purpose.

2. The Retroactive Application Confirms the Punitive Nature

The ordinance's retroactive elimination of existing property rights, without any showing of individual wrongdoing, strengthens the conclusion that it constitutes forbidden legislative punishment rather than legitimate prospective regulation. Pet. App 100a. See *Landgraf v. USI Film Products*, 511 U.S. 244, 266 (1994) (retroactive legislation raises particular concerns about fairness).

V. This Case Presents An Ideal Vehicle For Resolving These Important Issues

This case provides an excellent vehicle for addressing multiple significant constitutional questions that

frequently arise in challenges to local regulation. The record clearly establishes both the categorical nature of the prohibition and its targeted impact on non-commercial owners. No procedural obstacles would prevent the Court from reaching the merits of these important issues.

Moreover, the case presents these issues in a context that highlights their practical importance to property owners nationwide. Local governments increasingly employ categorical bans that eliminate property rights of disfavored groups while exempting favored classes. Clear guidance from this Court is needed on the constitutional limits of such regulation.

CONCLUSION

For the foregoing reasons, the petition for a writ of certiorari should be granted.

Respectfully submitted,

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