No. 22-1191

IN THE
Supreme Court of the United States

THOMAS GEARING and
DANIEL GEARING,

Petitioners,

v.

CITY OF HALF MOON BAY,

Respondent.

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

BRIEF IN OPPOSITION

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INTRODUCTION

In 2020, the City of Half Moon Bay began eminent domain proceedings to acquire land owned by Petitioners Thomas and Daniel Gearing. This acquisition was one of several that the City had initiated to preserve coastal land historically designated for public recreation. The City communicated its interest in acquiring the property numerous times to the Gearings, as it was statutorily required to do before filing an eminent domain action in state court. Alerted to the City's upcoming eminent domain action, the Gearings filed their own suit in federal court, alleging a Fifth Amendment taking, as well as violations of the Due Process and Equal Protection Clauses. The City filed its eminent domain action in state court soon after and subsequently requested that the District Court abstain under *Railroad Commission of Texas v. Pullman Co.*, 312 U.S. 496 (1941) until the pending eminent domain action was resolved. The District Court sensibly abstained, and the Ninth Circuit affirmed.

The Gearings argued that *Knick v. Twp. of Scott*, 139 S. Ct. 2162 (2019) and *Pakdel v. City and Cnty. of San Francisco*, 141 S. Ct. 2226 (2021) preclude the application of *Pullman* abstention in regulatory takings cases. Both lower courts soundly rejected this argument, which demanded that an 80-year, well-established legal doctrine be abrogated by two cases that did not even mention it by name.

The Gearings have pointed to no split of authority or unsettled questions of federal law justifying this Court granting certiorari. They suggest that *Pullman* abstention deprives them of a federal forum, when its

application only *stays* their federal case until the state eminent domain proceeding has concluded. Following the state court's adjudication of state law issues, the Gearings can return to federal court to litigate their federal claims. Nevertheless, the Gearings propose an exception to *Pullman* that does not exist for any other constitutional right and would undermine a doctrine that serves the principles of federalism, comity, and judicial economy.

Because it fails to meet the Court's criteria for certiorari and the decisions below correctly rejected its claims, this Court should deny the Petition.

STATEMENT OF THE CASE

The California Coastal Act requires every coastal city and county to maintain a Local Coastal Program ("LCP") to implement policies that protect and preserve coastal resources in the coastal zone. Cal. Pub. Res. Code § 30000 *et seq*. An LCP consists of a Land Use Plan ("LUP") and an Implementation Plan. *Id.* §§ 30108.4-30108.6. In 1981 the City of Half Moon Bay, which is located entirely within the coastal zone, adopted an LUP under the California Coastal Act. ("Respondent's Appendix") R. App. 4a. The Coastal Commission certified the LUP in 1985 and the accompanying Implementation Plan in 1996. R. App. 4a.

The Gearings own six undeveloped parcels in the West of Railroad ("WRR") area of the City, located adjacent to City-owned blufftop lands overlooking the ocean ("Property"). R. App. 5a. The 1985 LUP designates the WRR area, which likely contains environmentally sensitive habitat, for regional public recreation and requires that any residential

development comply with Planned Development policies, including a requirement to prepare a specific plan prior to development. R. App. 4a. These land use restrictions were in place when the Gearings acquired their parcels in the 1990's. ("Petitioner's Appendix") Pet. App. 43.

On October 20, 2020, the City Council approved an LUP update ("2020 LUP Update") without making any substantive changes to the policies affecting the WRR. R. App. 5a. Consistent with the 1985 LUP and 1996 LCP, the 2020 LUP Update allows residential development in the WRR area under a master plan,[1] but prioritizes public acquisition with the intent of preserving the blufftop area for its significant habitat, coastal access and recreation, and scenic value. R. App. 4a-5a.

On October 1, 2020, the Gearings submitted a letter to the City that they characterized as an application to build housing on their properties under SB 330, a recently enacted state law that requires local agencies to approve certain applications for affordable housing development. Pet. App. 3. The City responded on October 13, 2020, explaining that SB 330's provisions do not excuse owners from complying with the LUP. Rather, the LUP requires a specific plan before a property owner may file an application

[1] The 2020 LUP Update requires a "master plan" rather than a "specific plan," but there is no substantive difference between the two. A specific plan, as defined by California Government Code section 65450 *et. seq.,* is a "master plan." For consistency, all future references will be to a specific plan. R. App. 5a.

for development of an individual property under SB 330. Pet. App. 3.

The City had at this time been in the process of acquiring parcels in the WRR area to implement the LUP and sought to acquire the Gearings' property as part of that effort. Pet. App. 18. As a prerequisite to exercising eminent domain under California law, the City notified the Gearings of its decision to appraise the Property and made a formal offer for the full amount of the appraised value. Pet. App. 3. The Gearings rejected the offer. Pet. App. 18. The City then mailed a notice to the Gearings, advising them that the City Council would consider adoption of a Resolution of Necessity ("RON") on March 16; the RON would authorize the City to file an eminent domain action in state court. Pet. App. 18. The Gearings have not challenged the City's right to acquire the Property for public purposes.

On March 15, 2021, the day before the City Council hearing and almost three months after the City first notified them of its intent to acquire the Property, the Gearings filed a federal action alleging a Fifth Amendment taking and claims under the Due Process and Equal Protection Clauses of the Constitution. Pet. App. 18-19. The City filed its eminent domain action in state court a week later and soon after filed a Motion to Abstain in the federal court action. Pet. App. 18-19. The motion requested that the District Court, under *Pullman,* stay the federal action until the state court had addressed uncertain questions of state law in the eminent domain action. In opposition to the City's Motion to Abstain, the

Gearings argued that *Knick* and *Pakdel* implicitly bar *Pullman* abstention in regulatory takings cases.

The District Court found the Gearings' assertions to be "without merit" and granted the City's Motion, pointing out that "nothing in *Knick or Pakdel* purports to overrule or even mentions *Pullman* or any other abstention doctrine." Pet. App. 22-23. In a straightforward application of the doctrine, the Court found that all three *Pullman* factors had been met and abstention was warranted. Pet. App. 37. Additionally, the Court noted that the Gearings could protect their federal claims by filing a reservation of their federal takings claim for adjudication by the District Court under *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411, 421 (1964). Pet. App. 9. The Gearings subsequently did just that. Pet. App. 9.

The Ninth Circuit affirmed, echoing the District Court's holding that *Knick* and *Pakdel* did not preclude *Pullman* abstention. Pet. App. 6. The Court of Appeal properly held that abstention under *Pullman* was warranted because the Gearings' complaint raised issues of state housing law that had not been addressed by California courts, adjudication of which could narrow the Gearings' federal claims. Pet. App. 11-13. The Circuit Court further held that federal court abstention did not require the Gearings to adjudicate their Fifth Amendment takings claims in the state court eminent domain action. Pet. App. 8-9. Meanwhile, the Court held, the Gearings could preserve the federal forum to adjudicate their federal claims after the state court had resolved the uncertain issues of state law related to application of SB

330 that the Gearings raise in their Complaint. Pet. App. 9-10.

REASONS TO DENY THE PETITION

I. This is an unorthodox regulatory takings case: the City is *trying* to pay the Gearings just compensation in eminent domain proceedings that began months before the Gearings filed an inverse condemnation claim in federal court.

The Gearings allege that the City initiated eminent domain proceedings and moved for abstention specifically to deprive them of just compensation in their regulatory takings action. Pet. 3. They allege that the City's eminent domain action was a "counterpunch" to the Gearing's federal inverse condemnation suit. Pet. 33. This framing misrepresents the facts of the case and obfuscates California's eminent domain process. In reality, the City commenced its acquisition process and tried to compensate the Gearings months before the Gearings filed their inverse condemnation action in federal court. The Gearings' inverse condemnation action is essentially an attempt to remove the eminent domain action to federal court.

A. The City seeks to acquire the Property as part of a broader program of land acquisition along the City's coastal bluffs.

The City's efforts to purchase the Property are part of a broader program to acquire land along the City's coastal bluffs. Pet. App. 18. The bluffs are experiencing severe erosion, threatening the stability of the City's portion of the California Coastal Trail. R.

App. 6a. The Gearings' property is located in the WRR area of the City, which has historically been zoned to allow residential development and regional public recreation. The WRR area has been subject to development restrictions since the Coastal Commission certified the City's 1985 LUP, long before the Gearings acquired the Property. R. App. 4a. Pet. App. 43. The LUP also prioritizes public acquisition of property in the area to preserve the area's scenic, ecological, and recreational value. R. App. 5a. The City's acquisition of parcels in the WRR area seeks to implement these LUP provisions.

Under California law, eminent domain proceedings begin well in advance of the date the eminent domain action is filed in state court. On December 22, 2020, several months prior to condemning the Gearings' Property, the City advised the Gearings of the City's interest in acquiring the Property and the City's intent to obtain an appraisal of the fair market value of the Property. Pet. App. 18. The Gearings failed to respond to the notice. R. App. 6a.

Following completion of the appraisal, the City offered the Gearings the full amount of the appraisal to purchase the Property, as required by California law. Cal. Gov't Code § 7267.2 (a)(1); Pet. App. 18. The Gearings ignored the City's offer. Pet. App. 18. On March 16, the City Council adopted a RON to acquire the Property by eminent domain. Pet. App. 18. The City filed the eminent domain action within a week. Pet. App. 18-19.

Accordingly, the Petition distorts the start date of the eminent domain process. The City's filing of the eminent domain action was the final step in a months-

long process initiated well in advance of the Gearings' inverse condemnation action.

B. The risk in this case is not that local governments will try to preemptively pay compensation in eminent domain. The risk is that, with a reversal, landowners will race to federal court to cut off eminent domain proceedings.

The Gearings' description of the City's conduct is also inconsistent with the motives of public agencies defending against regulatory takings claims. The Gearings suggest that a government agency opposed to paying just compensation for a regulatory taking would, rather than contesting liability for the taking outright, seek to purchase the regulated property for its full appraised value. In reality, government agencies invariably contest liability for the regulatory taking itself. The notion that public agencies will start voluntarily agreeing to takings and paying compensation to regulate land use is implausible.

Unlike public agency defendants in regulatory takings suits, California's eminent domain statutes require public agencies to notify property owners months in advance of the agency's intent to acquire the property, potentially by eminent domain if the agency cannot come to a voluntary agreement with the owner. Cal. Gov't Code § 7267.2; Cal. Civ. Proc. Code § 1245.220. Under existing law, if a property owner files a regulatory takings action in federal court after receiving notice of a public agency's intent to acquire the property by eminent domain, *Pullman* abstention has long permitted District Courts to stay

the federal action until the state action is resolved. *See*, *e.g.*, *Creel v. City of Atlanta,* 399 F.2d 777, 779 (5th Cir. 1968). In addition to serving the interests of federalism and judicial economy, *Pullman* acts as a safeguard from strategic lawsuits asserted against lawfully filed state eminent domain actions. *Pullman*, 312 U.S. at 501.

Categorically exempting regulatory takings claims from *Pullman* would destroy this safeguard. It would encourage and empower eminent domain defendants to race to federal court to cut off the eminent domain proceeding and remove the action to federal court. Because the implementation of public projects sometimes requires acquisition of property by eminent domain, allowing property owners to remove eminent domain actions to federal court would present difficulties for local agencies attempting to provide infrastructure to their communities. Ordering abstention in the federal action, as the Fifth Circuit has noted, would be judicious and less confusing than allowing both actions to proceed concurrently:

> Not only is municipal eminent domain ordinarily a local matter, but it is difficult to imagine a situation where more confusion would arise than would be the case if the parties here were allowed to simultaneously pursue both this action and the state condemnation proceeding. In the state proceeding the City seeks to acquire fee simple title, an acquisition which the District Court here has no jurisdiction to grant and has not been asked to grant. . . . Presumably, should both suits proceed and should plaintiff prevail, he would be entitled to an award of damages in both courts, one for the

> remnant value of his fee simple interest and the other for antecedent damages . . . . In such event, how could either court properly allocate its award without knowledge of or control over what the other court was doing?

Creel, 399 F.2d at 779. Facing the cost of proceeding in two fora, the risk of inconsistent adjudications, and the difficulty of fairly allocating the awards in the two cases, public agencies would be inclined to delay or avoid infrastructure projects requiring acquisition of property by eminent domain, at great loss to the public.

II. The courts below sensibly abstained to allow a pending eminent domain action to proceed. They did not relegate the Gearings to filing a state inverse condemnation action à la *Williamson County* or require the Gearings to litigate their federal inverse condemnation claims in the eminent domain action.

The Gearings allege that the District Court's abstention under *Pullman* relegated them to state court and deprived them of their chosen forum for their federal regulatory takings claim. Pet. i. To the contrary, abstention does not force the Gearings to litigate their federal claims in state court nor subject them to an exhaustion requirement.

The Gearings manufacture conflict among the circuit courts regarding the application of *Pullman* in takings cases. There is no such conflict. Of the many *Pullman* cases cited by the Gearings where the court denied abstention, none involve a pending, related

state court action. This Court has provided clear instructions for how such cases should be adjudicated: "Where there is an action pending in state court that will likely resolve the state-law questions underlying the federal claim, we have regularly ordered abstention." *Harris Cnty. Comm'rs Ct. v. Moore*, 420 U.S. 77, 83 (1975). The lower courts have followed this guidepost. The varied outcomes of *Pullman* cases simply reflect the application of *Pullman* factors to the facts, not disagreement over how the doctrine should be applied.

This court has also advised lower courts to abstain when "the state-law questions have concerned matters peculiarly within the province of the local courts." *Harris Cnty.,* 420 U.S., at 83-84. An eminent domain action pending in state court concurrently with a federal inverse condemnation action is precisely the circumstance where a "wise and productive discharge" of abstention is warranted. *See Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25, 29 (1959).

The Circuit Courts have consistently upheld abstention in takings cases where an eminent domain action in state court is pending. *See*, *e.g., Edwards v. Arkansas Power & Light Co.*, 683 F.2d 1149, 1156 (8th Cir. 1982); *Ahrensfeld v. Stephens*, 528 F.2d 193, 197, 199-200 (7th Cir. 1975); *M&A Gabaee v. Cmty. Redevelop. Agency of L.A.*, 419 F.3d 1036, 1039 n2 (9th Cir. 2005); *Creel*, 399 F.2d, at 779.

III. The Gearings are not harmed by abstention; the decision does not impose a judicial exhaustion requirement on their Fifth Amendment claims, and they have reserved those claims under *England*.

The Gearings frame *Pullman* abstention as an exhaustion issue, arguing that the District Court's decision to abstain forces them to exhaust their federal takings claims in state court. Pet. 11. The Ninth Circuit pointedly disagreed with this assertion, concluding that "[t]he state court can adjudicate the eminent domain action without reaching the regulatory taking issue because eminent domain and regulatory takings suits compensate property owners for different injuries." Pet. App. 8. The Ninth Circuit agreed that the federal action should be stayed until the state court adjudicates uncertain issues of state law in the eminent domain action. Following that adjudication, the Gearings "could then litigate their regulatory takings claim in federal court and recover damages for the economic impact of the regulation and interference with their investment-backed expectations." Pet. App. 9.

Federal court abstention here does not force the Gearings to litigate any of their federal claims in the eminent domain action. The Gearings' assertion that the two claims cannot be litigated independently is incorrect because the Gearings reserved their federal claims for adjudication in federal court under *England*. 375 U.S. at 421. An *England* reservation gives the Gearings the right to have any federal questions that may arise in a state action be adjudicated in

federal court after resolution of the state action. *Id*. The Ninth Circuit and District Court both emphasized the *England* reservation's value as a "safeguard" against any potentially improper adjudication of federal claims in state court. Pet. App. 10, 25.

The Gearings incorrectly argue that they are *required* to litigate their federal takings claims in the eminent domain action. Without adjudicating the Gearing's federal claims, however, the state court could provide the federal court with a definitive interpretation of SB 330 and how it interacts with the LUP's specific plan requirement. That determination is entirely separate from the Gearings' federal claims but could narrow the federal claims.

In the Complaint, the Gearings assert that they "submitted their preliminary application for development under Senate Bill 330 to build dwelling units on their lots." Pet. App. 54. The Gearings have thus placed at issue whether SB 330 required that the City accept the Gearings' application as complete. *See* Cal. Gov't Code § 65943(a) (establishing process for agency to find that an application is "complete"). If so, the Gearings contend that local development controls such as the LUP's specific plan requirement would not apply to their property, rendering their takings claim based on those controls moot.

SB 330 prohibits local agencies from disapproving applications proposing construction of affordable housing unless the agency makes specific written findings. Pet. App. 3; Cal. Gov't Code § 65589.5(a)(1)(A), (d), (i), (j). The Gearings allege that SB 330 grants them the right to build houses on the

Property, regardless of the LUP's requirements for a specific plan. Pet. App. 53-54. The City contends that SB 330 does not apply to a property that is subject to legislative approvals such as a specific plan. The City also has not been able to determine if the Gearings have proposed housing that meets the requirements of SB 330. To decide whether the Gearings' application can be approved under SB 330, the state court must determine whether SB 330 applies prior to the LUP's requirements, and if so, whether the Gearings' proposed project meets the definitions of affordable housing under SB 330. *See* Cal. Gov't Code § 65589.5(d), (h)(3) (requiring approval of housing affordable to "very low, low-, or moderate-income households").

Because SB 330 was recently adopted in 2019, it is uncertain whether (a) SB 330 requires the City to accept the Gearings' preliminary application as complete, (b) the City should approve the application without consideration of the requirement in the LUP for a specific plan, and (c) the Gearings have proposed an affordable housing project that meets the requirements of SB 330. These questions of state law will likely be adjudicated by the state court through special procedures for resolution of evidentiary and legal issues in eminent domain actions.

Trial courts in California eminent domain actions must determine the fair market value of the property being acquired. Cal. Civ. Proc. Code § 1263.310. The value must account for legislative and administrative regulations that limit the uses of the property, because the allowable uses of property determine value. *See City of Perris v. Stamper*, 376 P.3d 1221, 1223

(Cal. 2016). Parties in eminent domain proceedings can request the court's ruling on "evidentiary or other legal issues affecting the determination of compensation" in advance of trial to allow the parties to instruct their appraisers as to the facts and law, rather than risk exclusion of an appraisal on the eve of trial. Cal. Civ. Proc. Code § 1260.040 (a).

Because the Gearings have claimed a right to approval of an application to build under SB 330, one or both parties will likely file a motion in the eminent domain action under section 1260.040. That motion would likely request a resolution of some or all of the three uncertain questions of state law identified above, and potentially other disagreements as to the construction of SB 330, the LUP, and the interaction of the two laws.

If SB 330 prevents the City from requiring a specific plan, then the state court may decide that the Gearings' application requesting approval to build houses constituted a complete application for purposes of SB 330, the City was required to approve the application, and the Property should be valued as entitled for housing development. That ruling would likely narrow the federal taking claim to a temporary taking for the period between the City's rejection of the Gearings' preliminary application and the filing of the Gearings' inverse condemnation action. *See First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, Cal.*, 482 U.S. 304, 317-19 (1987). Following a final judgment in the eminent domain action, the Gearings could return to federal court to litigate their temporary takings claims. If they succeed on their federal claims, the Gearings

could recover the difference in compensation between the amount they were awarded by the state court and the amount they are owed for the regulatory taking. *See Creel*, 399 F.2d at 779. If a jury is permitted to determine liability for federal takings claims, the Gearings would have that right. Because the federal claims will involve different questions of fact and law, the Gearings would not incur duplicative attorneys' and experts' fees to adjudicate their federal claims. Accordingly, they would receive the full benefits of a federal forum for their takings claims.

If, on the other hand, the state court construes the SB 330 to require compliance with the LUP prior to filing an application subject to SB 330, and/or that the Gearings' application does not include an affordable housing component required by SB 330, the Gearings' application will be incomplete. Lacking a complete application, there could be no final agency decision on the allowable scope of development of the Property. Accordingly, the Gearings' federal claims would be unripe. *See Williamson Cnty. Reg'l Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172, 186 (1985). Under either scenario, the state court construction of SB 330 has the potential to streamline the Gearings' federal claims.

The Gearings overstate the degree to which they are harmed by the delay in the adjudication of their federal takings claims. In particular, they point to potential financial burdens. Pet. 33-34. The District Court, rightfully unconvinced by the Gearings' claims about the consequences of delay, pointed out that the Gearings could return to federal court and recover attorneys' fees and experts' fees under 42 U.S.C. section

1988 if they are successful. Pet. App. 37. The Gearings would also be eligible for pre-and post-judgment interest in federal court if they prevail on their takings claims. *See U.S. v. Johns*, 146 F.2d 92, 93 (9th Cir. 1944); *U.S. v. 156.81 Acres of Land*, 671 F.2d 336, 338-39 (9th Cir. 1982).

IV. State Courts are not biased in favor of local agencies on land use matters.

The Gearings argue that abstention should be disfavored because state courts are biased against property owners in challenges to land use regulations. Pet. 17. There is no evidence to support that assertion. California courts frequently rule against local agencies in land use cases and in recent years been particularly unsympathetic to cities' restrictions on housing development. *See*, *e.g.*, *Jenkins v. Brandt-Hawley*, 86 Cal.App.5th 1357, 1383-87 (2022); *Ruegg & Ellsworth v. City of Berkeley*, 63 Cal.App.5th 277, 310-15 (2021); *Cal. Renters Legal Advoc. & Educ. Fund v. City of San Mateo*, 68 Cal.App.5th 820, 845, 851 (Cal. Ct. App. 2021). *See also Lockaway Storage v. County of Alameda*, 216 Cal. App. 4th 161, 188 (2013) (County's regulation prohibiting development of self-storage facility constituted temporary taking).

V. *Knick* aimed to level the playing field for takings claims, not to elevate them above other constitutional rights.

By eliminating *Williamson County*'s state court exhaustion requirement from Fifth Amendment regulatory takings, *Knick* lifted regulatory takings to the same status as other constitutional rights. Like equal protection, due process, and other civil rights claims,

regulatory takings may now be adjudicated in a federal forum. *Knick*, 139 S. Ct. at 2170 ("Fidelity to the Takings Clause and our cases construing it requires overruling *Williamson County* and restoring takings claims to the full-fledged constitutional status the Framers envisioned when they included the Clause among the other protections in the Bill of Rights.") The Petition stretches *Knick* well beyond the Court's holding and would create a new disparity between regulatory takings and other constitutional rights. As the District Court pointed out, "categorically exempt[ing] takings claims from *Pullman* abstention, while subjecting all other constitutional rights to it . . . would *exalt* takings claims over all others." Pet. App. 26.

CONCLUSION

The Court should deny the petition for certiorari.

Respectfully submitted,

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