No. 25-414

IN THE
Supreme Court of the United States

THE SUNSHINE GROUP, LLC,

PETITIONER,

v.

CITY OF DANA POINT, CALIFORNIA

AND MARK SAMUEL ADAMS,

RESPONDENTS.

On Petition for Writ of Certiorari
to the Court of Appeal of the State of California
Fourth Appellate District, Division Three

Amici Curiae Brief of Desmond, Nolan, Livaich & Cunningham; Matteoni, O'Laughlin & Hechtman; Turner Law; Jenny & Jenny, LLP; O'Neill, Huxtable & Abelson APC; California Eminent Domain Law Group; Sullivan Workman & Dee, LLP; and Palmieri, Hennessey & Leifer, LLP Supporting Petitioner

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INTEREST OF THE AMICI CURIAE

This brief is submitted on behalf of a group of lawyers that share decades of experience in the practice of condemnation and property rights law throughout California.[1] As such, we bring a unique perspective to this case. In submitting this brief, we seek to encourage action by the Court to promote a revival of the substantive rights and procedural safeguards intended to ensure the Fifth Amendment's guarantee of just compensation to property owners in California.

Desmond, Nolan, Livaich & Cunningham, a law firm based in Sacramento, California, has specialized in eminent domain and inverse condemnation law since 1938. More than a dozen of the firm's cases have been the subject of reported opinions issued by the California Supreme Court and California Courts of Appeal. Counsel Gary Livaich and partners Brian Manning and Kristen Renfro represent property owners in a broad range of condemnation actions. Ms. Renfro currently serves as the California member of Owners' Counsel of America, a national organization of lawyers dedicated to the advancement, preservation, and defense of private property rights in eminent domain, inverse condemnation, and regulatory taking cases.

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[1] No counsel for any party has authored this brief in whole or in part, and no person other than the amici has made any monetary contribution to this brief's preparation or submission. The parties were timely notified.

Matteoni, O'Laughlin & Hechtman, a law firm based in San Jose, California, has specialized in eminent domain and land use regulation since 1974. Partners Norm Matteoni, Peggy O'Laughlin, Bart Hechtman, Bardley Matteoni, and Gerry Houlihan, have extensive knowledge of California case law concerning challenges to land use controls. Mr. Matteoni is the primary author of the Continuing Education of the Bar (CEB) treatise *Condemnation Practice in California*, the lead reference guide used by California attorneys and cited by California courts in direct and inverse condemnation cases.

Turner Law, a law firm based in San Mateo, California, specializes in eminent domain with a primary focus on representing landowners and business owners. Over the past 30 years, the firm's owner, Andrew Turner, has focused his trial practice almost exclusively on representing landowners and business owners in eminent domain matters. Mr. Turner is a frequent speaker at eminent domain conferences and meetings typically attended by attorneys, appraisers, and right-of-way professionals.

Jenny & Jenny, LLP, is a law firm based in Martinez, California, with a focus on real estate-related matters, particularly eminent domain, land use, and zoning disputes. The firm's owner, Scott Jenny, is a seasoned trial attorney who has successfully fought to protect the rights of individual, family, and business property owners throughout California for over 30 years.

O'Neill, Huxtable & Abelson APC is a law firm based in Los Angeles, California. The primary

practice area of the firm, carried forward by Mary O'Neill, is protecting the rights of property owners in eminent domain and inverse condemnation proceedings. The firm has numerous reported cases and considers the preservation and protection of the Fifth Amendment to be of paramount concern.

California Eminent Domain Law Group, based in Glendale, California, is devoted exclusively to the practice of eminent domain law. For more than 25 years, owner Glenn L. Block has successfully represented property and business owners throughout California.

Sullivan Workman & Dee, LLP, a law firm based in Pasadena, California, concentrates its practice in eminent domain and inverse condemnation. It has represented business and property owners in more than a thousand eminent domain cases. It has also represented hundreds of business and property owners in inverse condemnation actions. Charles Cummings and Daniel Pranata regularly speak at eminent domain continuing education conferences.

Palmieri, Hennessey & Leifer, LLP, a law firm based in Orange County, California, handles a variety of real estate disputes, with a focus on eminent domain and inverse condemnation matters. Patrick Hennessey and Michael H. Leifer, have worked together for nearly 40 years, and along with partners Michael Kehoe, Anish Banker, and Erin Naderi have handled hundreds of eminent domain and inverse condemnation cases, predominantly representing property and business owners throughout California, including in numerous

reported cases concerning eminent domain and other real estate litigation matters.

SUMMARY OF ARGUMENT

Petitioner presents this Court with a case of patent abuse of the receivership process to effectuate a taking in violation of the Fifth Amendment. It is the latest example of the display of what Petitioner aptly refers to as California's "unconstitutional attitude" with respect to private property rights. We echo Petitioner's call for action by this Court, which is needed to restore the constitutional guarantee of just compensation in California.

In addition to the persuasive arguments presented by Petitioner, we add that California's receivership statute did not authorize the clear overreach of the court-appointed receiver. The trial court disregarded Petitioner's procedural due process rights, and the Court of Appeal compounded the prejudice by failing to review the merits of the case. Intervention by this Court would be consistent with both the Court's longstanding and recent precedent in cases such as *Tyler v. Hennepin Cnty., Minnesota*, 598 U.S. 631 (2023), and *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155 (1980), in which the Court has rejected government overreach in other situations in which possession and control over private property for a limited scope of purpose invested in the government the means but not the right to convert private interests to public use.

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ARGUMENT

This case epitomizes the "damned if you do, damned if you don't" nature of the landscape for property owners in California. Buying property in California is expensive. The permitting process to undertake work on aging structures can be a nightmare. Local governments are incentivized to make the process harder, not easier, for owners. When owners must resort to judicial intervention, far too often they find that their substantive rights and the procedural safeguards necessary to preserve them are casually sacrificed in the name of governmental efficiency, judicial economy, and political whims dressed up as public policy. What is the consequence? A stasis that leaves properties like Petitioner's in limbo.

Now it seems it is not enough that local governments prevent owners from making desired uses of their properties or utilize eminent domain to take the properties to do something the government deems preferable. Now that owners have been cornered into doing *nothing* with their properties, cities like Dana Point are orchestrating uncompensated takings under the guise of nuisance abatement to force redevelopment. Worse yet, as evidenced in this case, this is occurring with the direct facilitation of courts and judicially appointed receivers who are abusing broad powers conferred upon them for the narrowly circumscribed purpose of remedying code violations under California's Health and Safety Code to protect public safety.

Should we be surprised that a city would circumvent the legislatively mandated procedural

and substantive safeguards of California's Eminent Domain Law to avoid paying just compensation? It is faster, cheaper, and garners less public scrutiny. The owner can be painted with a broad brush as a bad actor who had all the fallout coming to them. The process is summarily rubber-stamped by a court. Then, to top it all off, the property owner ends up paying the government's fees rather than there being any risk of it coming out the other way around. The courts of California are so numb to the hostile landscape they've allowed to flourish, they have completely missed the signpost: we have officially entered the Twilight Zone.

I. ACTION BY THE COURT IS NEEDED TO RESTORE THE CONSTITUTIONAL GUARANTEE OF JUST COMPENSATION IN CALIFORNIA.

How many owners have been, and will continue to be, subjected to what Petitioner has? How many more will be compelled to comply with extortionate demands to avoid being treated like Petitioner and suffering financial ruin in the process? We appeal to the Court to act so we do not have to wait to find out.

A. California's Receivership Statute Did Not Authorize the Taking that Occurred as a Result of Patent Overreach By the Receiver.

The right to just compensation is self-executing and irrevocable. *First English Evangelical Lutheran Church v. Los Angeles*, 482 U.S. 304, 315-

16 (1987); *Knick v. Township of Scott*, 588 U.S. 180, 192 (2019). It cannot be extinguished by a conflicting state statute, nor upon the whims of local governments, or at their behest through judicial authorization. The California Supreme Court long ago recognized "that the legislature by statutory enactment may not abrogate or deny a right granted by the Constitution." *Rose v. State*, 19 Cal. 2d 713, 725 (1942). The government's obligation to pay just compensation when a taking or damaging occurs "is a restriction placed by the Constitution upon the State itself, and upon all of its agencies who derive from it their power of eminent domain." (*Rose*, 19 Cal. 2d at 720.) Further, the statute governing the receivership powers itself provides: "This section *shall not be construed to deprive an owner* of a substandard building *of all procedural due process rights guaranteed by the California Constitution and the United States Constitution*, including, *but not limited to*, receipt of notice of the violation claimed and an adequate and reasonable period of time to comply with any orders that are issued by the enforcement agency or the court." Cal. Health & Safety Code § 17980.7(c)(14) (emphasis added).

Petitioner sought to have its structure demolished and to be allowed to build new. This would have abated the conditions cited on the property. The receiver obtained an initial cost estimate of $863,000 that he asserted would "remediate all of the issues at the property." Proceeding with this scope of work, even factoring in cost increases attributable to initially unanticipated work items, would also have abated the conditions cited on the property. Neither course of action was

pursued because the City wanted the property "preserved" for the public's benefit because of its supposed value as a "historic resource" and because it offered members of the public "'a low cost affordable accommodation.'" These policy objectives, laudable or not, are entirely beyond the sole express objective articulated in the state's Health and Safety Code for which a receiver is narrowly empowered to act: "to correct the conditions cited in the notice of violation." Cal. Health & Safety Code § 17980.7(c)(4)(C), (D), (F), and (G).

Given the extraordinary powers conferred upon a court-appointed receiver, adherence to the letter of the scope of statutory authority should always be of paramount concern. Yet the recitation of facts by the Court of Appeal below reveals the trial court's flippancy in considering the scope of work the receiver was orchestrating and the purposes to be served thereby. The moment the receiver ventured beyond simply correcting cited health and safety violations into the territory of trying to implement other public policy objectives, he left the realm of authority of the government to act pursuant to police power and implicated the government's eminent domain power, the exercise of which requires strict adherence to notice requirements and other procedural protections in accordance with California's Eminent Domain Law, which were wholly absent in this proceeding.

The City of Dana Point had a means to assert authority to take Petitioner's property to see it restored in a particular fashion. It could have initiated an eminent domain proceeding, paid just compensation for the property, and then sold the

property to a third party to implement a historical restoration project subject to reservations or restrictions "to protect or preserve the attractiveness, safety, and usefulness of the project" in keeping with its policy objectives. Cal. Civ. Proc. Code § 1240.120. It chose to evade its obligation to pay just compensation, duck the risk of any challenge to its right to take the property, or to follow mandatory procedures, and instead secured the collaboration of a receiver to run roughshod over Petitioner's constitutional and statutory rights. The gross overreach by the receiver was beyond the scope of the receiver's limited statutory authority and contrary to the Eminent Domain Law. See Cal. Civ. Proc. Code § 1230.020 ("Except as otherwise specifically provided by statute, the power of eminent domain may be exercised only as provided in this title.")

B. Silence from this Court Would Imperil a Broad Swath of Owners of Interests in Real Property in California.

A broad swath of owners stands to suffer harm if this Court does not act. Lenders, for example, face the extinguishment of security interests in receivership cases because California courts of appeal have held that the state's trial courts are empowered to authorize super-priority borrowing by receivers, premised upon the purpose of the receivership "'to protect the health and safety of residents who might be substantially endangered by unsafe building conditions.'" *Cnty. of Sonoma v. Quail*, 56 Cal. App. 5th 657, 675 (2020), as modified

on denial of reh'g (Oct. 28, 2020) (quoting *City and County of San Francisco v. Jen*, 135 Cal.App.4th 305, 311 (2005).) In contrast, in an eminent domain proceeding, lienholders are protected from impairment of their security interests and entitled to payment of just compensation therefore according to seniority of their liens. Cal. Civ. Proc. Code §§ 1265.225, 1265.230.[2]

Moreover, the incentive for government entities to abuse the receivership process has only become stronger. An amendment to Health and Safety Code section 17980.7 went into effect earlier this year, authorizing receivers to borrow funds to secure "debt and moneys owed" not only to themselves but "to the enforcement agency" that initiates the action seeking the receiver's appointment. Cal. Health & Safety Code § 17980.7(c)(4)(G); 2024 Cal. Legis. Serv. Ch. 487 (S.B.

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[2] In eminent domain proceedings, a condemning agency must also name as defendants all "persons who appear of record or are known by the plaintiff to have or claim an interest in the property described in the complaint," and "[a]ny person who claims a legal or equitable interest in the property described in the complaint may appear in the proceeding" to make a claim on some or all just compensation to be awarded in the proceeding. Cal. Civ. Proc. Code §§ 1250.220, 1250.230. A party appearing as a defendant in an eminent domain enjoys far greater means of preserving its rights and coming out whole than do lenders who merely receive notice of a receivership proceeding and have no practical ability to restrain damaging spending and irresponsible borrowing by the receiver.

1465). The expansion of opportunity for mischief is painfully apparent.[3]

C. Compounding Harm Was Caused By the Trial Court's Disregard of Petitioner's Procedural Due Process Rights, and the Court of Appeal Failed to Review the Merits of the Case.

The extent to which the Court of Appeal focused on Petitioner's lack of citation to evidence in the record as a basis to reject its arguments, particularly the due process challenge, is deeply ironic: It is part and parcel of the prejudice Petitioner suffered precisely because it was impeded from developing a record of supporting evidence.

Further, the Court of Appeal wrote off Petitioner's due process argument because of its erroneous assumption that, because "Sunshine no longer owned the property" by the time the trial court considered the approval of the sale, it retained no interest in the outcome of the ex parte application. But a foreclosed mortgagor has a

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[3] One need only peruse a web page maintained by the California Receivership Group ("CRG") to understand what a farce the purported restoration of the "iconic landmark" on Petitioner's property was, and that a cottage industry that relies on the abuse of the receivership process is already in the making. CRG proudly touts its work to see the nondescript motor lodge on Petitioner's property converted into "a breathtaking boutique hotel that honors its past glory while providing a modern luxury experience."
https://www.calreceivers.com/projects/orange-county/seaside-inn-dana-point.

reasonable expectation of realizing value in excess of the balance owed on the loan secured by the deed of trust; and foreclosure subsequent to the accrual of an inverse condemnation claim does not preclude the foreclosed mortgagor's recovery for damages suffered before the foreclosure. See *Klopping v. City of Whittier*, 8 Cal.3d 39, 58 (1972); ("fortuity" of foreclosure held not to preclude owner from recovering precondemnation damages); and *San Diego Gas & Electric Co. v. Superior Court*, 13 Cal.4th 893, 911, 935 fn.25, 939-943 (1996) (only injunctive relief rendered moot by foreclosure; intangible intrusion claim considered on its merits). In fact, recovery for damage occasioned by the foreclosure itself, if caused by the taking or damaging alleged, may be available to a foreclosed mortgagor. See *Klopping,* 8 Cal.3d at 58 ("recovery for damages occasioned by" foreclosure left to be "more fully explored on remand.").

If nothing else, Petitioner should receive full consideration of the merits of its case, which the Court of Appeal failed to provide. The California Supreme Court was unwilling to review the matter. This Court should not hesitate to fill the void left by that court's silence.

D. California Courts Need to Be Reminded of the Foundational Equitable Principles of Condemnation Law that Have Fallen By the Wayside.

This case is a poster child for what ails California concerning private property rights. It presents a particularly egregious example of the

consequences of the mentality of many local governments toward land-use regulation: a "we call the shots regarding your property, you just own it" mindset.[4] By all accounts, the motel on Petitioner's property was in a steady state of decline and disrepair for the past 40+ years, beginning well before Petitioner purchased the property. The cost to renovate the property clearly did not pencil out. Regulatory burdens on land use in California are onerous. The costs of developing or redeveloping property are substantial. It is not economically feasible for many owners to undertake a project like the one carried out in this case. Someone would have to subsidize a full-scale historical revitalization project to restore the property in the manner the City thought best to serve public interests. The City decided that someone would be the Petitioner. In the trial court's acquiescence to the manipulation of the receivership process to accomplish the City's objectives, it allowed the City an end-run around Petitioner's constitutional rights.

Experts from around the country have long agreed that California courts are hostile to the rights of private property owners. Professor William Fischel, for example, concluded that "the California [Supreme] Court stopped development at every turn." *Regulatory Takings: Law, Economics and Politics*, 218 (1995). Professor David Callies

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[4] It also demonstrates the unmitigated disaster that can result when a private property owner and the tether of the owner's stake in financial feasibility or any semblance of concern for the cost of the government's policy objectives is removed from the equation.

concluded simply, if conversationally, "we all know the California courts won't let landowner/ developers build anything." *Land Use Controls: An Eclectic Summary for 1980-1981*, 13 Urban Law, 723 (1981). Others agree, to such an extent that two seasoned observers expressed the darkly humorous thought that developers in other states wondered why a California developer would "sue a California community when it would cost a lot less and save much time if he simply slit his throat." Babcock & Siemon, *The Zoning Game Revisited*, 293 (1985).

Indeed, in this case, Petitioner would have been better off had the trial court just deeded his property over to the City at the outset of the case. At that time, Petitioner owned oceanfront property that the receiver estimated would be worth $6 million once "improved," asserting the cost of remediation would "be more than offset by the increased value of the Property." By the conclusion of the proceeding, however, Petitioner walked away not only without the property, but *owing* the receiver $459,833.62 in fees, costs, and expenses, and $841,382.88 to the City for its attorney's fees, in addition to being out his own litigation expenses.

How could the trial court allow this to occur? How could the Court of Appeal rationalize the result? How could the California Supreme Court blithely ignore it? We hope not to have a few months from now why this Court too would let such injustice stand.

Now is an ideal time for this Court to remind California courts of the forgotten foundational equitable principles that underlie condemnation

law. At one time, the California Supreme Court recognized that the constitutional guarantee of just compensation extends "'not merely where the taking is cheap or easy,'" but that "indeed the need for compensation is greatest where the loss is greatest." *Klopping v. City of Whittier*, 8 Cal. 3d 39, 43 (1972). The same court embraced the foundational principles espoused by this Court that "[t]he constitutional requirement of just compensation derives as much content from the basic equitable principles of fairness ... as it does from technical concepts of property law," and that "[a] paramount purpose of eminent domain law is to do substantial justice." *Cnty. of San Diego v. Miller*, 13 Cal. 3d 684, 692 (1975) (quoting United States v. Fuller (1973) 409 U.S. 488, 490, and *United States v. Miller*, 317 U.S. 369, 375 (1943)). But the California Supreme Court has failed to continue to uphold these principles and to demand the same of California's trial and appellate courts.

This Court's attention is sorely needed. California must be brought back into alignment with the core principles that once animated property rights jurisprudence in accord with this Court's precedents. The Court should grant review and take the opportunity to call California out for failing to heed even the state's own foundational case law promoting fairness in consideration of Fifth Amendment claims and to spur emphasis on enforcement of the Takings Clause to bring about more equitable outcomes for all property owners.

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II. INTERVENTION BY THE COURT WOULD BE CONSISTENT WITH BOTH LONGSTANDING AND RECENT PRECEDENT.

This Court has interceded on behalf of property owners in other cases in which the government has overstepped in the course of exercising a limited right to possess and exert control over private property, and it has done so irrespective of whether a state or one of its courts has been the culprit. Two examples of note are one of the Court's most recent takings cases, *Tyler v. Hennepin Cnty., Minnesota*, 598 U.S. 631 (2023), and the often-cited case of *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 163 (1980).

In *Tyler*, the Court examined foreclosure upon property to generate proceeds to satisfy tax debt, providing the government with the means and immediate control over the owner's interest in the balance of proceeds but not the right to retain it. The Court concluded that Hennepin County "could not use the toehold of the tax debt to confiscate more property than was due." 598 U.S. at 639. In *Webb's*, the Court examined the retention of interest on deposited funds that provided the government with the means and immediate control over the interest earned, but not the right to withhold its ultimate distribution to the owner. The Court held that neither a state legislature, nor a state court by judicial decree, could recharacterize private principal as public money "because it is held temporarily by the court." 449 U.S. at 164.

Surely, the same logic dictates that the trial court in this case, through authorization of actions of a judicially appointed receiver, could not implement at a property owner's expense a historic restoration project without violating Petitioner's constitutional rights. Just as in *Tyler*, the receiver used the toehold of code violations to take sticks from Petitioner's bundle not authorized by the Health and Safety Code. The receiver did not confine its activities to those that further the limited statutorily authorized purpose of effectuating repairs necessary to correct the conditions cited in the notice of violation that was the sole and exclusive premise for the appointment of the receiver. Instead, just as in *Webb*, the receiver wrongfully treated the equity in Petitioner's private property as a limitless public piggy bank to carry out a broader project for the express purpose of serving broader public interests. It would be entirely consistent with the Court's analyses and holdings in its prior cases to similarly analyze and conclude in this case that the government exceeded its police powers and effected an uncompensated taking in violation of the Fifth Amendment.

CONCLUSION

This Court should no longer abide California's cavalier disregard for the Fifth Amendment's guarantee of just compensation. Taking private property for public use requires the use of eminent domain. California is a state in which the interpretation of public use is so broad as to accommodate nearly any use of property a local jurisdiction might conceive. The singular hard-and-fast rule is that the government must pay for what

it takes from the property owner for such a project. If the City of Dana Point's strategy to evade payment of just compensation is tacitly sanctioned by this Court's silence, the Fifth Amendment may as well be written off as a dead letter in California.

In consideration of the points raised herein, in addition to the arguments set forth by Petitioner, the petition for certiorari should be granted.

Respectfully Submitted,

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