

No. 25-958

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IN THE  
**Supreme Court of the United States**

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GEORGE SHEETZ,

*Petitioner,*

*v.*

COUNTY OF EL DORADO, CALIFORNIA,

—  
*Respondent.*

*On Petition for Writ of Certiorari to  
the California Court of Appeals  
Third Appellate District*

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**BRIEF OF AMICI CURIAE  
BUILDING INDUSTRY ASSOCIATION  
OF THE GREATER VALLEY  
IN SUPPORT OF PETITIONER**

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**TABLE OF CONTENTS**

	<i>Page</i>
INTEREST OF <i>AMICUS CURIAE</i> .....	1
SUMMARY OF ARGUMENTS.....	5
ARGUMENT .....	6
I.    The Court Should Clarify Whether the Lower Court’s Application of the Deferential “Reasonable Relationship” Test Satisfies <i>Dolan’s</i> “Rough Proportionality” Standard .....	6
II.   The Court Should Grant Certiorari as the Questions Presented Carry Sweeping Economic Consequences for Housing Affordability and Supply Nationwide.....	10
CONCLUSION.....	14

## TABLE OF AUTHORITIES

	<i>Page(s)</i>
<b>Cases</b>	
<i>Armstrong v. United States</i> , 364 U.S. 40 (1960) .....	7, 8
<i>Boatworks, LLC v. City of Alameda</i> , 247 Cal. Rptr. 3d 159 (2019).....	8
<i>Building Industry Association of the Greater Valley, v. City of Hughson, et. al</i> , Case No. CV-21-000815, Superior Court of California, County of Stanislaus (Filed 2021) .....	2
<i>Building Industry Association of the Greater Valley, et. al v. City of Patterson, et. al</i> , Case No. CV-24-010405, Superior Court of California, County of Stanislaus (Filed 2024) .....	2
<i>Cedar Point Nursery v. Hassid</i> , 141 594 U.S. 139 (2021) .....	7, 9
<i>Dolan v. City of Tigard</i> , 512 U.S. 374 (1994).....	3, 5, 6, 7, 9, 13, 14
<i>Ehrlich v. City of Culver City</i> , 12 Cal. 4th 854 (1996) .....	7, 8

	<i>Page(s)</i>
<i>Grupe v. Cal. Costal Comm’n</i> , 166 Cal. App. 3d 148 (1985) .....	7
<i>Koontz v. St. John's River Water Mgmt. Dist.</i> , 570 U.S. 595 (2013).....	9, 13, 14, 15
<i>Murr v. Wisconsin</i> , 582 U.S. 383 (2017) .....	7
<i>Nollan v. California Coastal Commission</i> , 483 U.S. 825 (1987).....	3, 9, 10, 13
<i>Pennsylvania Coal Co. v. Mahon</i> , 260 U.S. 393 (1922) .....	14
<i>Sheetz v. Cnty. of El Dorado</i> , 601 U.S. 267 (2024).....	5, 7, 9, 14, 15
 <b>Statutes</b>	
Mitigation Fee Act Cal. Government Code;	
§ 66000-66025 .....	7
§ 66001 .....	8
 <b>Rules</b>	
Supreme Court Rules;	
33.1.....	1
34.....	1

	<i>Page(s)</i>
37.2.....	1
37.6.....	1

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 (last visited Mar. 6, 2026) ..... 13

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 Vol. 8, No. 1, 2005..... 12

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**INTEREST OF *AMICUS CURIAE***

The Building Industry Association of the Greater Valley (“BIAGV”), as *amicus curiae*, respectfully submits this brief in support of the Petition for Writ of Certiorari filed by Petitioner, Mr. George Sheetz (“Sheetz”), pursuant to Supreme Court Rules 33.1, 34, and 37.2.<sup>1</sup> On behalf of its members, BIAGV respectfully requests that this Court grant Mr. Sheetz’s Petition for Certiorari to provide much needed clarity and uniformity of decision on the constitutional issues presented in this case.

The Building Industry Association of the Greater Valley is a Stockton, California-based 501(c)(6) non-profit trade association, the mission of which is to meet community housing needs, protect stable and livable wage jobs, and advocate for responsible development, land use, and building policies. BIAGV’s territory covers much of the northern San Joaquin Valley and western Sierra Nevada foothills of California, coterminous with the counties of Calaveras, Mariposa, Merced, San Joaquin, Stanislaus, and Tuolumne. BIAGV is comprised of approximately thirty-five “builder” members consisting of home builders, land developers, remodelers, suppliers, and other persons and entities engaged in

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<sup>1</sup> Pursuant to Rule 37.2, all parties were timely notified of BIAGV’s intent to file this *amicus* brief. Further, pursuant to Rule 37.6, no part of this brief was authored by any party or its counsel, and no person or entity other than BIAGV and its counsel funded its preparation or submission.

the home building industry, and approximately seventy-five “associate” members including banking institutions, title companies, attorneys, and other professionals who provide support services to the residential development industry. BIAGV closely monitors efforts by local governments—across the twenty-five city councils and boards of supervisors within its jurisdiction—to adopt new legislative exactions or raise existing impact fees. Occasionally, BIAGV is forced to challenge such legislation in court where the ordinance bears no relationship to the impact or is not roughly proportional to a project category’s impact. (See, e.g., *Building Industry Association of the Greater Valley vs. City of Hughson, et. al*, Case No. CV-21-000815, Superior Court of California, County of Stanislaus (Filed 2021)(settlement resulted in the repeal of the City’s challenged impact fee ordinance); *Building Industry Association of the Greater Valley, et. al v. City of Patterson, et. al*, Case No. CV-24-010405, Superior Court of California, County of Stanislaus (Filed 2024) (trial court holding that the City of Patterson’s citywide transportation impact fee program was invalid as it failed to demonstrate the required “essential nexus” and “rough proportionality” between the fees and the impact of the new development).

BIAGV’s vigilance in monitoring and, when necessary, challenging local impact fees directly reflects its members’ daily experience navigating the land use and development process, which has become defined by the pervasive imposition of a multitude of development fees and exactions as conditions to obtaining

land use and development permits. These ongoing challenges underscore BIAGV’s immediate and direct interest in this Court granting Mr. Sheetz’s Petition. BIAGV members routinely face a permitting system in which fees and exactions are untethered to actual project impacts and function primarily as funding mechanisms outside of the taxation process.

The questions presented in this case—as set forth in Petitioner, Sheetz’s Petition for Writ of Certiorari—are of real-world importance to the development and housing industries nationwide.<sup>2</sup> The divide amongst courts in their application of *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987) (“*Nollan*”) and *Dolan v. City of Tigard*, 512 U.S. 374 (1994) (“*Dolan*”) (collectively “*Nollan/Dolan*”) is not merely academic. BIAGV’s members are directly affected by any rule that relaxes the meaningful review of exactions imposed as conditions of approval. If the decision of the California Appellate Court—which held that the “rough proportionality” standard of *Dolan* is satisfied by employing California’s lower threshold “reasonable relationship” test—is allowed

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<sup>2</sup> The questions presented in Mr. Sheetz’s Petition at p. i are: “1. Does the Takings Clause’s protection against unconstitutional permit conditions encompass an evidentiary requirement (as opposed to a legislative process) by which the government bears the burden to demonstrate that its development permit exaction complies with Dolan’s “rough proportionality” standard?” and “2. Can an impact fee be roughly proportional when imposed on one discrete class of development (residential) for the purpose of addressing impacts caused by another discrete class of development (commercial)?”

to stand, it will invite jurisdictions to evade necessary constitutional scrutiny of monetary exactions, thereby substantially increasing the financial burdens imposed on new development. Those increased costs do not simply affect a developer's bottom line. They are inevitably incorporated into the final price of homes, directly increasing housing costs for families and exacerbating the ongoing housing affordability crisis.

At a time when communities across the country face significant housing shortages and escalating construction costs, weakening the constitutional limits on government exactions would further restrict housing supply and accessibility. The practical implications would be to shift generalized public funding obligations onto a discrete class of property owners, homebuyers, and renters—precisely the type of governmental leveraging the unconstitutional conditions doctrine is designed to prevent.

In short, BIAGV supports certiorari to provide clarity and uniformity regarding the application of the *Nollan/Dolan* test to development exactions and to ensure that lower courts do not dilute the “essential nexus” and “rough proportionality” requirements that safeguard private property rights under the Fifth and Fourteenth Amendments of the United States Constitution.

## SUMMARY OF ARGUMENTS

This Court should grant certiorari for two reasons.

First, the Court of Appeal incorrectly substituted the deferential “reasonable relationship” test for the constitutionally mandated “rough proportionality” test articulated in *Dolan*. In so doing, the lower court diminishes the rigor this Court has required when the government demands the surrender of property or money as a condition to approving a development permit. This substitution cannot be reconciled with this Court’s unanimous reaffirmation in *Sheetz v. Cnty. of El Dorado*, 601 U.S. 267 (2024) (“*Sheetz I*”), that exactions imposed through legislation are not categorically exempt from meaningful constitutional scrutiny. *Sheetz I*, 601 U.S. at 279. The lower court’s decision risks transforming a substantive constitutional limitation on the government’s ability to demand the surrender of property interests into a deferential inquiry satisfied by generalized fiscal studies and abstract policy rationales.

Second, the question presented is of exceptional national importance. Development impact fees have become a primary revenue tool for local governments. If constitutional scrutiny may be diluted by the “reasonable relationship” test, the unconstitutional conditions doctrine will be substantially weakened nationwide. The predictable consequences are higher development costs, diminished project feasibility, reduced housing supply, and increased home prices. These burdens fall not only on builders, but on resi-

dential homebuyers and renters already struggling with affordability challenges.

For BIAGV, the preservation of rigorous constitutional standards is indispensable to fulfilling its mission: meeting community housing needs, protecting stable construction employment, and promoting reasonable land use policies. Clear affirmation that application of *Dolan's* “rough proportionality” test and not a lesser substitute is essential to ensure that local infrastructure funding mechanisms do not result in uncompensated takings that undermine housing production or shift generalized public costs onto a narrow class of property owners. To this end, BIAGV encourages this Court to grant certiorari to restore doctrinal clarity and to protect the constitutional framework that directly governs the economic viability of housing development throughout California and the nation.

## ARGUMENT

### **I. The Court Should Clarify Whether the Lower Court's Application of the Deferential “Reasonable Relationship” Test Satisfies *Dolan's* “Rough Proportionality” Standard.**

In *Dolan*, this Court articulated a constitutional safeguard rooted in the Takings Clause: before the government may condition permit approval on the dedication of property, it must make an “individualized determination” that the exaction is “related in both nature and extent to the impact of the proposed

development.” *Dolan*, 512 U.S. at 391; see *Sheetz I*, 601 U.S. at 276 (articulating that a “permit condition that requires a landowner to give up more than is necessary to mitigate harms resulting from new development has the same potential for abuse as a condition that is unrelated to that purpose”). This requirement is not merely procedural—it reflects a foundational principle woven into the fabric of our constitutional order. As our nation’s founders and this Court have recognized, the protection of private property is “necessary to preserve freedom,” empowering individuals to shape their own destinies rather than ceding that authority to the government that is “always eager to do so for them.” *Cedar Point Nursery v. Hassid*, 141 594 U.S. 139, 147 (2021) (quoting *Murr v. Wisconsin*, 582 U.S. 383, 394 (2017).) *Dolan’s* requirement of proportionality safeguards that liberty by ensuring that those seeking permission from the government to develop their own land are not forced to disproportionately shoulder public burdens that should be borne by the community as a whole. *Armstrong v. United States*, 364 U.S. 40, 49 (1960) (“*Armstrong*”).

California’s “reasonable relationship” test, applied by the lower court departs from this constitutional command. Derived from California’s Mitigation Fee Act (“MFA,” Cal. Gov’t Code §§ 66000-66025) which predates *Dolan*, the “reasonable relationship” test requires “only an indirect relationship between a proposed exaction and a need to which the development contributes.” *Grupe v. Cal. Coastal Comm’n*, 166 Cal. App. 3d 148, 164-166 (1985); *Ehrlich v. City of*

*Culver City*, 12 Cal. 4th 854, 867 (1996) (“*Ehrlich*”)(interpreting the “reasonable relationship” standard adopted by Cal. Government Code section 66001 as imposing a requirement consistent with the *Nollan/Dolan* standard.) Although *Ehrlich* suggests harmony between the statutory “reasonable relationship” test and the constitutional framework of the *Nollan/Dolan* test, the practical application of the “reasonable relationship” test reveals a markedly more deferential approach favoring the government—one that tolerates broad legislative generalizations rather than demanding tailored, project-specific analysis to protect private property owners.

This distinction is consequential. *Dolan’s* “rough proportionality” test safeguards the principle articulated in *Armstrong*, that a property owner must not be forced to “bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Armstrong*, 364 U.S. at 49. In doing so, it places the evidentiary burden squarely on the government to justify both the necessity (aka “essential nexus”) and magnitude (aka “rough proportionality”) of the exaction imposed. In contrast, California’s “reasonable relationship test” permits reliance on generalized studies and aggregate data untethered to the individual parcel. *Boatworks, LLC v. City of Alameda*, 247 Cal. Rptr. 3d 159, 166 (Ct. App. 2019). Under this approach, governments may spread broad public infrastructure costs across new development categories without demonstrating that each assessed property is bearing only its proportional share. This dilution of scrutiny effectively resurrects the proposed

legislative safe harbors this Court unanimously rejected in *Sheetz I* (601 U.S. at 895, finding that the Fifth Amendment’s Takings Clause prohibits “legislatures and agencies alike from imposing unconstitutional conditions on land use permits”).

Moreover, as applied, the “reasonable relationship” standard affords a greater degree of deference to government agencies demanding concessions of money or property from landowners and imposes a higher burden of proof for those challenging such exactions than does *Dolan’s* “rough proportionality” test. *Dolan* requires the government to justify an exaction with evidence of proportionality; the MFA approach adopted by the lower court accepts generalized assumptions, requires no individualized proof, and effectively shifts the burden to the landowner. Pet. for Cert. at p. 32. This inversion of burden erodes the meaningful judicial scrutiny the Takings Clause demands. Allowing the “reasonable relationship” standard to act as a surrogate for the more stringent “rough proportionality” standard demanded by this Court encourages the government to do exactly what this Court warned against in *Koontz v. St. John’s River Water Mgmt. Dist.*, 570 U.S. 595 (2013) (“*Koontz*”); evade the limitations of *Nollan* and *Dolan* simply by creative phrasing of the potential taking. *Koontz*, 570 U.S. at 606 (warning against allowing the government to evade the limitations of *Nollan* and *Dolan* simply by phrasing its demands for property as conditions precedent to permit approval); *Cedar Point Nursery v. Hassid*, 594 U.S. at 144 (finding that the Constitution prevents property rights from being so easily manipulat-

ed); *Nollan*, 483 U.S. at 841 (1987) (holding that the Takings Clause is more than a pleading requirement and that compliance with it is more than just “an exercise in cleverness and imagination”).

As noted in the Petition for Writ of Certiorari at pp. 18-30, California is not the only state that has seemingly diluted *Dolan’s* “rough proportionality” standard with an alternative, lower standard. This case therefore allows this Court to dispel lingering doctrinal ambiguity and reaffirm that California’s “reasonable relationship” test is not—and cannot be a substitute for—this Court’s “rough proportionality” test which is meaningfully more demanding. Clear guidance is essential to ensure that lower courts do not collapse these distinct tests into a single, deferential inquiry.

## **II. The Court Should Grant Certiorari as the Questions Presented Carry Sweeping Economic Consequences for Housing Affordability and Supply Nationwide.**

The impact of this doctrinal confusion extends beyond abstract constitutional theory. Development impact fees have grown dramatically in scope and magnitude since *Nollan* was first decided nearly 40 years ago. In high-growth regions such as California’s Central Valley where BIAGV is located, such fees can add tens of thousands of dollars to the cost of constructing a single-family home. California’s municipal finance template has resulted in many local agencies developing a dependence upon development impact

fees and other development exactions such that development related fees comprise of up to one-third of some California cities' budgets. *Residential Impact Fees in California*, Turner Center for Housing Innovation at UC Berkeley, at 14 (August 2019).<sup>3</sup>

Empirical research confirms the scale of the burden. A 2019 study by the Turner Center for Housing Innovation at UC Berkeley found that average impact fees in California were \$23,455 for a single-family home and \$19,558 for a multi-family home, nearly three times the national average. *Residential Impact Fees in California*, Turner Center for Housing Innovation at UC Berkeley, at 42-45 (August 2019). In the Central Valley, the weighted average fees and costs for a home is approximately \$50,000 per house. *Residential Development Impact Fee Comparison Study*, North State Building Industry Association, at 6 (May 2021).<sup>4</sup> This issue is exacerbated in areas such as Sacramento County wherein the weighted average of fees and costs for homes is approximately \$97,000 per unit with the highest range fees and costs in the county set at \$105,000—amounting to one-fifth of the price of the home. *Id.* at 6-7.

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<sup>3</sup> This article is available at [https://turnercenter.berkeley.edu/wp-content/uploads/2020/08/Residential\\_Impact\\_Fees\\_in\\_California\\_August\\_2019.pdf](https://turnercenter.berkeley.edu/wp-content/uploads/2020/08/Residential_Impact_Fees_in_California_August_2019.pdf)

<sup>4</sup> This article is available at <https://northstatebuildingindustryassociationca.growthzoneapp.com/ap/CloudFile/Download/rZRzDDyr>

Without a doubt, increased impact fees, and the costs that they add to the development process has a correlating negative effect on the affordability of housing. Been, *Impact Fees and Housing Affordability*, Cityscape: A Journal of Policy Development and Research, Vol. 8, No. 1, 2005. Research examining development economics and housing markets reinforces this relationship. As one study explains:

When development fees approach a fifth of the local median house price, it can be difficult for developers to make a project pencil out, a factor that can prevent new housing from ever getting built. In cases where affordable housing projects pay impact fees for parks, transportation, capital improvements or other priorities, those fees work directly against the goal of building affordable housing. Prior research also suggests that development fees are often passed along to residents, making the housing that is built less affordable.

Mawhorter, et. al, *It All Adds Up: The Cost of Development Fees in Seven California Cities*, Turner Center for Housing Innovation at UC Berkeley, at p. 22 (March 2018).<sup>5</sup>

It is no secret that California is in the midst of what its Department of Housing and Community Development describes as a “housing crisis” marked

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<sup>5</sup> This article is available at [https://turnercenter.berkeley.edu/wp-content/uploads/pdfs/Development\\_Fees\\_Report\\_Final\\_2.pdf](https://turnercenter.berkeley.edu/wp-content/uploads/pdfs/Development_Fees_Report_Final_2.pdf)

by underproduction of new housing, large portions of the population paying over 30 percent of their household income toward housing, and a decrease in homeownership rates with levels at their lowest since the 1940s. *See, Addressing a Variety of Housing Challenges*, California Department of Housing and Community Development, [www.hcd.ca.gov/policy-and-research/addressing-variety-housing-challenges](http://www.hcd.ca.gov/policy-and-research/addressing-variety-housing-challenges) (last visited Mar. 6, 2026). But all of the State’s efforts to adopt policies and legislation to promote housing affordability may be of little effect if local development impact fees require up to an additional \$75,158 per multi-family unit and up to an additional \$156,614 per single-family unit on top of actual development and construction costs as was the case in the City of Fremont, California in 2018. Mawhorter, et. al, *It All Adds Up: The Cost of Development Fees in Seven California Cities*, Turner Center for Housing Innovation at UC Berkeley, at pp. 19-21 (March 2018). This is not to suggest that all development impact fees would fail to satisfy the “rough proportionality” test, but this information does reveal that impact fees are a substantial component of the cost of housing and thereby should be subject to the full rigor of *Nollan/Dolan* analysis.

This Court has warned of the vulnerability of landowners to “the type of coercion that the unconstitutional conditions doctrine prohibits because the government often has broad discretion to deny a permit that is worth far more than the property it would like to take.” *Koontz*, 570 U.S. at 604-605 (noting that land use permit applicants are particularly vulnera-

ble to extortionate demands for money). Faced with delay or denial, many landowners will “accede to the government’s demand, no matter how unreasonable.” *Id.* Even though BIAGV supports the government’s desire to improve communities, that shared goal does not permit local agencies to achieve this objective “by a shorter cut than the constitutional way of paying for the change.” *Dolan*, 512 U.S. at 396 (quoting *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 416 (1922)); *Koontz*, 570 U.S. at 606 (articulating that the government may not “leverage its legitimate interest in mitigation to pursue governmental ends that lack an essential nexus and rough proportionality to those impacts”).

Without clarification from this Court, local governments will continue to invoke the “reasonable relationship” test and other burden-shifting analyses as substitutes for *Dolan*’s more demanding standard. The result will be a doctrinal drift away from meaningful scrutiny and toward deference—precisely the outcome *Sheetz I* sought to prevent. The importance of this issue—both doctrinal and economic—warrants this Court’s review.

## CONCLUSION

For the BIAGV and the communities its members serve, allowing the lower courts to dilute the “rough proportionality” test of *Dolan* directly impacts whether homes are built, jobs are sustained, and whether families can afford a place to live. The practical implications include disproportionately shifting the burden that the Constitution requires the government to car-

ry onto property owners, builders, and ultimately homebuyers and renters. This is precisely the kind of leveraging this Court rejected in *Sheetz I* and warned against in *Koontz*. BIAGV respectfully urges this Court to grant certiorari and reaffirm that constitutional protections for private property remain robust in practice as well as in principle.

Dated: April 1, 2026

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