

No. 25-958

IN THE
Supreme Court of the United States

GEORGE SHEETZ,

Petitioner,

v.

COUNTY OF EL DORADO, CALIFORNIA,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE COURT
OF APPEAL OF CALIFORNIA, THIRD APPELLATE DISTRICT

**BRIEF OF *AMICI CURIAE* ON BEHALF OF THE
NATIONAL ASSOCIATION OF HOME BUILDERS;
CALIFORNIA BUILDING INDUSTRY ASSOCIATION;
BUILDING INDUSTRY ASSOCIATION OF THE
BAY AREA; THE NATIONAL ASSOCIATION OF
REALTORS AND THE CALIFORNIA ASSOCIATION
OF REALTORS IN SUPPORT OF PETITION
FOR WRIT OF CERTIORARI**

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IDENTITY AND INTERESTS OF *AMICI CURIAE*

The following named *amici curiae*, respectfully submit this Brief in support of the Petition for Writ of Certiorari filed by the Petitioner, George Sheetz.¹

The National Association of Home Builders (“NAHB”) is a federation of more than 700 state and local associations, comprised of approximately 140,000 members consisting of home builders, and other professionals supporting the home building industry; the California Building Industry Association (“CBIA”) is a statewide non-profit trade association of nearly 2,500 members that together are responsible for providing approximately 80 percent of all new homes produced annually in California; the Building Industry of the Bay Area (“BIA-BA”) is a non-profit association of home builders in the San Francisco Bay Area, devoted to protecting the ability to produce much-needed housing; the National Association of REALTORS® (“NAR”) is a national trade association, representing 1.4 million members, including its institutes and councils involved in all aspects of the residential and commercial real estate industries, and the California

1. **Rule 37.6 disclosure:** This Brief has been authored in whole by the undersigned counsel on behalf of CBIA, NAHB, BIA-BA, and NAR, and no monetary contributions were made by counsel or any party (other than the named *amici*) to fund the preparation of the Brief. Counsel for *amici* provided written notice of intent to submit this Brief as provided by Rule 37.2.

Association of REALTORS® (“CAR”) is a statewide trade association representing the interests of approximately 180,000 California real estate licensees, whose members are residential and commercial brokers, property managers, and other professionals engaged in the real estate industry.

These *amici*, their members, and millions of people seeking shelter of all types are directly affected and harmed by the continued approval of unjustified and excessive exactions, which impermissibly add to the cost of housing, and in many situations absolutely preclude the provision of new housing. (See, e.g., “California’s High Housing Costs: Causes and Consequences,” CALIFORNIA LEGISLATIVE ANALYST’S OFFICE (March 2015), pp. 13-19.)

SUMMARY OF ARGUMENTS

These *amici* respectfully but urgently request that this Court grant the Petition for Certiorari in order to review and correct the errant, constitutionally-deficient, decision of the California Court of Appeal for Third Appellate District below² and the refusal of the California Supreme Court to review and correct that blatantly flawed decision.

As shown by the actions of the courts below, this Court’s unanimous decision in *Sheetz v. County of El Dorado*, 601 U.S. 267 (2024) (“*Sheetz*”) fell on deaf ears on remand to California.

2. The subject appellate court decision was initially published at *Sheetz v. County of El Dorado*, 335 Cal.Rptr.3d 316 (Cal. Ct. App. 2025) and is referred to herein as “*Sheetz III*.”

This Court clearly explained that the federal Constitution requires that governments imposing exactions as conditions of development approval under the police power must show – by evidence – that the exactions are both “reasonably related and roughly proportional to” quantified development impacts, regardless of the process by which the exactions are imposed. “Substance” and evidence, rather than superficial distinctions based on “process” or “methodology,” are determinative of constitutional validity.

The appellate opinion on remand below gave empty lip service to this Court’s unanimous decision in *Sheetz*, while refusing to apply it. Instead, the opinion wrongly argued that the constitutional requirements for heightened scrutiny are “*the same as*” the minimal, abjectly deferential, and superficial statutory requirements and “indirect/rational relationship” standards this Court has repeatedly rejected.

Once again, and in disregard of the clear “writing on the wall” provided by this Court, the lower courts demonstrated that even admittedly “disproportionate” and unconstitutional impact fees will still be approved in California.

Respectfully, the Court should seize this opportunity to finally bring an end to the long-running refusal of lower courts like those in California to faithfully follow and apply this Court’s Takings jurisprudence and prohibitions against unconstitutional conditions in the nationally important housing and land use context.

In the absence of this Court’s intervention, the decision below leaves divisive and harmful questions clouding this important area of constitutional law:

Can a state “opt out” of faithful adherence to this Court’s Takings Clause precedents and continue to allow the imposition of unrestrained, admittedly disproportionate, impact fees and other exactions on new housing projects and other types of development?

Is a state like California somehow exempted from the federal Constitution and this Court’s jurisprudence, simply because the state’s laws make it is easier to impose “fees” on newcomers than to ask the existing voters to approve new taxes or assessments?

Amici respectfully submit that the answer is “NO”—there is not an Willie Sutton exception³ to the Takings Clause that allows governments to leverage the permitting power to force new housing projects and their future owners and renters to bear public burdens which, “in all fairness and justice, should be borne by the public as a whole.”

The opinion below did not faithfully follow *Sheetz*. It superimposed a very lax “rational legislative process” gloss on this Court’s *Nollan*⁴ and *Dolan*⁵ framework,

3. The notorious bank robber is said to have been asked by reporter Mitch Ohnstad why he robbed banks. According to Ohnstad, he replied, “Because that’s where the money is.” (https://en.wikipedia.org/wiki/Willie_Sutton.)

4. *Nollan v. California Coastal Comm’n*, 483 U.S. 825 (1987).

5. *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

which allowed the County’s grossly disproportionate traffic impact mitigation (“TIM”) fee to survive scrutiny – simply because the fees were perceived as the outcome of an ostensibly “rational” process or “methodology.”

The courts below continued to allow the County to impose its TIM fees based on the old and discredited “indirect relationship test” fashioned by the California Supreme Court more than 50 years ago in *Associated Homebuilders, Inc. v. City of Walnut Creek*, 484 P.2d 606 (1971), and later codified by the State Legislature in the state’s Mitigation Fee Act⁶ (the “California standard”).

The California Supreme Court declined Petitioner’s request to review and correct the inconsistent decision below. Despite being de-published, however, the errant opinion in *Sheetz III* continues to have an out-sized and deleterious influence, reflected in a growing body of “underground” opinions unjustifiably assuming that it accurately dictates how this Court’s decision in *Sheetz* should be applied in California.⁷

The California standard in both its judicial and statutory forms fails to adequately protect fundamental

6. Mitigation Fee Act (“MFA”), California Gov. Code §§ 66000, *et seq.*)

7. *See, e.g., “The Coming Battle Over Impact Fees,”* CALIFORNIA PLANNING & DEVELOPMENT REPORT, Vol. 41, No. 3 (March 2026), discussing *Livable San Diego v. City of San Diego*, No. D084333, 2025 WL 2887089, at *9, 19 (Cal. Ct. App. 2025) (unpublished): “An appellate court has upheld San Diego’s revised impact fee ordinance, saying it meets the *Nollan/Dolan* standard. But the unpublished ruling [citing de-published *Sheetz III*] depends heavily on the *Ehrlich* ruling from the 1980s, which the U.S. Supreme Court recently repudiated.”

rights guaranteed by the federal Constitution and is far less protective of those rights than this Court has demanded in *Nollan*, *Dolan*, *Koontz*⁸, and *Sheetz*, and is only “slightly more rigorous” than the distinct due process-rational basis test rejected by this Court in those decisions.⁹

As this Court has repeatedly pointed out:

Lower court judges are certainly free to note their disagreement with a decision of this Court. But the ‘Supremacy Clause forbids state courts to dissociate themselves from federal law because of disagreement with its content or a refusal to recognize the superior authority of its source.’ ...

DIRECTV v. Imburgia, 577 U.S. 47, 53 (2015) (reversing a decision from California).

Certiorari should be granted to enforce this Court’s Fifth Amendment jurisprudence in all fifty states of the Union and to assure that constitutional rights enjoy the same protection nationwide.

8. *Koontz v. St. Johns River Water Mgt. Dist.*, 570 U.S. 595, 628-629 (2013) (“*Koontz*”).

9. *Homebuilders Ass’n of Metropolitan Portland v. Tualatin Hills Park and Recreation Dist.*, 62 P.3d 404, 410 (Or. App. 2003) (“*Tualatin Hills*”).

ARGUMENT

The 50-plus year reign of the “California standard” has created a system that requires new housing to not only “pay its own way [but] to pay everybody’s way.”¹⁰

Today, the variety and amount of impact fees and similar exactions imposed on new housing in California are staggering. Local governments in California now routinely impose fees and similar exactions for what are essentially “general public purposes” – i.e., facilities historically funded by broad-based taxes or assessments – which are unrelated or only “theoretically” related to needs caused by new development – because (1) that is where the money is; and (2) the California standard tolerates it.

Impact fees, and development fees more broadly, are politically popular because they are charged to developers rather than current residents. ... With few options to generate revenue and faced with pressing current and anticipated capital needs, California cities have increasingly relied on impact fees as a revenue source... translat[ing] to higher housing prices. By relying on fees rather than taxes to fund infrastructure, localities ask less of existing property owners and more of new residents.¹¹

10. CALIFORNIA DEPARTMENT OF HOUSING AND COMMUNITY DEVELOPMENT, “*Statewide Housing Plan Update, Raising the Roof: California Housing Development Projections and Constraints, 1997-2020*,” p.84 (2000).

11. TERNER CENTER FOR HOUSING INNOVATION, University of California, Berkeley, “*Residential Impact Fees in California*.”

If the past is prologue, California will, absent this Court's intervention, continue to invent new ways to avoid the Court's precedents in *Nollan*, *Dolan*, *Koontz*, and now *Sheetz*.

It is also important to recognize that California's comprehensive defiance has shortchanged the Takings Clause rights not only of California residents and property owners, but those of property owners and residents in other jurisdictions due to the pervasive influence of the California courts in other jurisdictions in this area of law.

I. THE COURTS IN CALIFORNIA AND ELSEWHERE REFUSE TO APPLY THE "HEIGHTENED SCRUTINY" TO EXACTIONS AND FEES THAT THIS COURT DEMANDS.

The opinion below purported to apply heightened scrutiny but did so "in a way that ignores the words of the standard and renders it a mere vacuous shell." *See Santa Monica Beach, Ltd. v. Superior Court*, 968 P.2d 993, 1037 (Cal. 1999) (Chin, J., dissenting). Instead, it resorted to semantic contortions of the *Nollan/Dolan* framework that led the court to again uphold the disproportionate County TIM fee merely because it was perceived to be the product of a "rational quasi-legislative process."¹²

Current Practices and Policy Considerations to Improve Implementation of Fees Governed by the Mitigation Fee Act, [(2019), pp. 14-15, 21].

12. As stated in the opinion below: "California follows a similar *procedural or program-level approach* to assessing the validity of generally-applicable impact fees." Opn. at 41 (emphasis added).

This Court, however, has never held that the *process* leading to the imposition of exactions on new housing is determinative of their constitutional validity.

To the contrary, this Court explicitly rejected such a “due process” approach to the scrutiny of exactions and fees in *Lingle v. Chevron USA, Inc.*, 544 U.S. 528 (2005). This Court’s precedents explicitly warn that this sort of formalistic, process-oriented box-checking turns the Takings Clause into nothing more than a “pleading requirement,” and compliance with it “an exercise in cleverness and imagination.” *Nollan*, 483 U.S. at 841. That is precisely what has happened in California and other jurisdictions that follow it.

The court below briefly acknowledged that this Court “invalidated settled California law” in *Sheetz* (Opn. at 2),¹³ and agreed that the TIM fee was in fact an “exaction” that should have been subject to *Nollan/Dolan* scrutiny (Opn. at 17–18).

The court also recognized that the case presented “a constitutional challenge to an development impact fee brought under the Fifth Amendment’s takings clause.” Opn. at 3 (emphasis added). Nevertheless, it then felt “compelled” to rely on antiquated California cases predating *Sheetz* (e.g., *Ehrlich v. City of Culver City*, 911 P.2d 429 (Cal. 1996)) to apply the watered-down version of such “scrutiny” that has been endemic in California case

13. The opinion below repeatedly claimed that its prior decision in “*Sheetz I*” (300 Cal.Rptr.3d 308 (Cal. Ct. App. 2022)) had been based on “settled California law,” or “longstanding precedent,” or “established California law.” Opn. at 3–5.

law, and in California’s Mitigation Fee Act – and which this Court rejected in *Nollan* and *Dolan*.

The lax California standard, looking only for an “indirect relationship” between anticipated impacts of development and the exaction imposed, originated in *Associated Home Builders*, which subsequently came to be viewed as “[t]he leading California case on the constitutionality of exactions.” *Grupe v. California Coastal Comm’n*, 212 Cal.Rptr. 578, 587 (Cal. Ct. App. 1985). The rule derived from *Associated Home Builders* was described in *Grupe* as holding that “there need be only an indirect relationship between an exaction and a need to which the project contributes. *See also Remmenga v. California Coastal Comm’n*, 209 Cal.Rptr. 628, 631 (1985).

California courts continued to apply that extremely deferential “indirect relationship” test, despite demands for more stringent scrutiny in other courts, and ultimately in this Court. The court below argued that the *Nollan/Dolan* test “is similar to the reasonable relationship standard” employed in California. Opn. at 38. It is not even close.

This same error was repeated in another recently decided post-*Sheetz* California decision, *Livable San Diego v. City of San Diego*, No. D084333, 2025 WL 2887089, at *8 (Cal. Ct. App. 2025) (unpublished), which likewise holds that local impact fee legislation that is deemed to satisfy the statutory requirements of the MFA therefore also satisfies the flimsy California “variant” of *Nollan/Dolan* scrutiny — “as a matter of law:” “Indeed, *Ehrlich* compels a conclusion that the legal issue is one in

the same.” *Livable San Diego v. City of San Diego*, No. D084333, 2025 WL 2887089, at *8 (Cal. Ct. App. 2025) (unpublished).¹⁴ Based on that unfounded assumption, it held that courts “do not need to resolve the threshold question of the applicability of *Nollan* and *Dolan*” at all, because “even if the heightened scrutiny employed in those cases were to apply, it has already been satisfied as a matter of law.” Opn. at 18.

This is sophistry. The notion that heightened scrutiny is “the same as” the California standards merely requiring “some relationship” between imagined impacts and the exaction imposed does not withstand any level of scrutiny.

California cases wrongly frame the relevant question as being whether the government’s action in imposing an impact fee “was arbitrary, capricious, or entirely lacking in evidentiary support.” *Home Builders Ass’n of Tulare/Kings Counties, Inc. v. City of Lemoore*, 112 Cal.Rptr.3d 7, 14 (Cal. Ct. App. 2010) (“*Lemoore*”). That is the “standard of review” for the ordinary run of “quasi-legislative” action in California not implicating constitutional rights. However, “*Nollan* and *Dolan* confirm that the [applicable] test is not a standard of review, but a fact-based inquiry . . . Neither gave any deference to or even considered whether the original legislative judgment . . . was reasonable. Instead, both *Nollan* and *Dolan* recognized that . . . the state bears the burden of demonstrating that the fit or nexus . . . meets the constitutional standard.”

14. “In short, the [MFA’s] ‘reasonable relationship’ standard reflects the prevailing takings clause standard.” *Livable San Diego v. City of San Diego*, No. D084333, 2025 WL 2887089, at *8 (Cal. Ct. App. 2025) (unpublished) (quoting *Ehrlich, supra*, and citing *Sheetz III*).

Santa Monica Beach, 968 P.2d at 1028–29 (Baxter, J., dissenting).

Proof that the lax California standard is substantially different than the requirements mandated by this Court in *Nollan, Dolan, et al.*, is the fact that the threshold, if not dispositive, question addressed in the long and unbroken line of *pre-Sheetz* California cases was whether or not the challenged monetary exaction was subject to “heightened scrutiny” or the California standard. Ever since 1996, California courts applied the lax California standard to all exactions (other than the very few characterized as “ad hoc administrative fee impositions.”) If the two standards were really “the same” then why bother to draw that artificial distinction?

California knew, and knows, that these standards materially differ — and are not equivalent. See *Loyola Marymount Univ. v. Los Angeles Unified School Dist.*, 53 Cal.Rptr.2d 424, 435 (Cal. Ct. App. 1996) (“In light of *Ehrlich’s* discussion, we conclude that the heightened scrutiny standards articulated by the United States Supreme Court in takings clause cases have no application in California cases involving development fees Fees of this nature may indeed be subject to a lesser standard of judicial scrutiny.”); *Tanimura & Antle Fresh Foods, Inc. v. Salinas Union High School Dist.*, 246 Cal.Rptr.3d 622, 643–44 (Cal. Ct. App. 2019) (“*Tanimura*”) (heightened scrutiny requires a “close” and “thoroughly established” connection between impact and the burden of the exaction, and is not applicable to “legislatively imposed fees”); *Esprit One LLC v. County of Los Angeles*, No. B194464, 2007 WL 4201356, at *7 (unpublished) (“Our Supreme Court has made clear that more stringent standard applies

only to ‘ad hoc exactions’); *Extra Space of Laguna Hills v. San Joaquin Hills Transp. Corridor Agency*, No. G028469, 2002 WL 683835, at *1–2 (unpublished) (“Here, the calculation of development fees, imprecise as it may be, is applied uniformly, generally, and ministerially. As a result, heightened scrutiny is not triggered”).¹⁵

All the litigation over the 28 years or more questioning the applicability of *Nollan* and *Dolan* – and culminating in this Court’s decision in *Sheetz* -- should not be rendered meaningless. Yet the decision below does so by mistakenly treating California’s standard as “the equivalent” of this Court’s heightenedscrutiny requirement.

Heightened scrutiny is a materially more stringent test than the California standard. The Petition points out that heightened scrutiny demands that where a governmental agency imposes a development fee to mitigate a housing project’s impact, the project must have a clear and direct causal relationship to that impact. As Justice Scalia explained in *Nollan*, the relevant inquiry in unconstitutional conditions cases is the extent to which a project “creates” or “contributes to” the “public need or burden.” *Nollan* 483 U.S. at 838; *see also id.* at 838–39 (the Nollans’ housing did not “creat[e] the need,” the impact being mitigated must be “caused by construction of the Nollans’ new house”); *Commercial Builders of N. Cal. v. City of Sacramento*, 941 F.2d 872, 877 (9th Cir. 1991) (“the Takings Clause requires a cause-and-effect relationship”)

15. The same is true of the decisions from the jurisdictions that follow the California standard. *See Tualatin Hills, supra*, 62 P.3d 404, 410 (the California standard is “only slightly more rigorous than the ‘rational basis’ test and, as explained by the California Supreme Court, appropriately applies to ‘legislatively imposed fees’”).

(Beezer, J., dissenting); *Lemoore, supra*, 112 Cal.Rptr.3d at 26 (Ardaiz, P.J., concurring in the result) (the need for the fee should have a “direct relationship” to the project on which it is imposed).

In contrast, the California standard is easily satisfied by a mere “theoretical” or “plausible”¹⁶ connection between *any* social, economic, cultural, or environmental “impact” downstream of the actions of the future occupants of the new houses. As long as an inventive “nexus study” or similar “fee justification” document can aver that there is a “link-in-a-chain”¹⁷ relationship between that activity and an asserted public need, it will be presumed to satisfy whatever verbal formation or level of scrutiny the reviewing court nominally applies. *See Commercial Builders*, 941 F.2d at 877 (upholding fees based on a nexus study showing only a “tenuous and theoretical connection”) (Beezer, J., dissenting).¹⁸

California cases under the MFA highlight the material difference—if not outright incompatibility—between

16. *See San Remo Hotel L.P. v. City & County of San Francisco*, 41 P.3d 87, 102 (Cal. 2002).

17. *See Whaler’s Village Club v. California Coastal Comm’n*, 220 Cal.Rptr. 2, 14 (Cal. Ct. App. 1985).

18. *See* RAND CENTER ON HOUSING AND HOMELESSNESS, *The High Cost of Producing Multifamily Housing in California*, p.28 (2025) (“State law in California requires that these fees must be justified through nexus studies that establish an empirical link between the magnitude of the fee and the hypothesized effect it is aimed at addressing. But...research [has] called into question the rigor of these studies...because they often justify fees that can vary by as much as an order of magnitude across geographically proximate, observably similar communities.”).

heightened scrutiny and the California standard. In *Lemoore, supra*, the majority opinion upheld various impact fees that were challenged under the MFA, including fees to fund an aquatics center, a gymnasium and fitness center and “a naval air museum.” *Id.* at 575. Rather than require the city to show that the fees were proportional to impacts created by new housing projects, the court confined its review to whether the city followed “a rational process” to establish the fees. Since the city hired a consultant who modeled a superficially plausible relationship between new housing development generally and a general public need for a multitude of future municipal improvements, the court concluded that the fee was valid.

According to the *Lemoore* majority, in “the proceedings before the City... [it] adequately considered all relevant factors and demonstrated a rational connection between those factors, the choice made, and the purposes of the enabling statute [the MFA].” *Id.* at 560; *accord, Tanimura, supra*, 246 Cal.Rptr.3d at 631 (“We determine only whether the District’s action [imposing the fee] was arbitrary, capricious, or entirely lacking in evidentiary support.”)

The MFA’s extremely deferential standard countenances impact fees that bear only an indirect and tangential connection to the impacts of new residential construction. In *Lemoore, supra*, Presiding Justice Ardaiz expressed deep concern about the nature and magnitude of the fees at issue in that case and the majority’s conclusion that they satisfy the California standard:

I have no argument that the proposed class of municipal projects herein is not desirable

or beneficial. However, I have great difficulty concluding that their desirability or need are a consequence of or have a direct relationship to the proposed projects herein.... Such responsibilities should fall equally in the community and, in my view to link it to a specific development is a tenuous thread. Utilizing that type of reasoning justifies a development fee for almost anything.... The impact of allowing general community municipal improvements without any realistic showing as to how they bear a direct...relationship to the proposed development raises serious issues as to whether the [MFA] does justify the fees imposed for the proposed improvements. *Id.* at 576-577 (Ardaiz, P.J., concurring in the result).

The MFA not only does not demand a close causal connection between the impact being mitigated and the proposed individual project on which the fee is imposed, it bars courts even from inquiring whether such a connection exists.

As construed by the California courts, the MFA prohibits reviewing courts from considering whether a development fee established through a valid legislative procedure has any causal relationship with an individual project. In fact, it is grounds for reversal if a court conducts such an inquiry.

Tanimura, supra, 246 Cal.Rptr.3d 622, is illustrative. At issue was the validity of an impact fee imposed on a housing project for the ostensible purpose of mitigating the project's "impact" on school facilities. However, the

project was legally restricted to seasonal farmworker housing with no dependents, so it could not be deemed to cause or contribute in any way to a “need” to fund additional school facilities.

The trial court agreed with the developer, finding ‘no facts to support a reasonable relationship between the fees and the project’s impact on school enrollment’ since ‘no children would live in this type of development.’ *Tanimura, supra*, at 634. The Court of Appeal found the “trial court’s reasoning is logically sound and thoughtfully articulated,” but reversed its ruling, nonetheless. According to the appellate court, the trial court erred because it “fails to reconcile its project-specific focus with controlling statutes.” *Ibid.* The California standard, the court of appeal held, prohibits any individualized analysis of impacts – or consideration of undisputed evidence showing the impossibility of any “impacts.”

However strained the connection between the findings of the District’s [nexus study] and the application of its [school fee] to [plaintiff]’s adults-only project, the alternative would be an untenable reading of the statute.... Nor are we persuaded by [plaintiff]’s contention that the imposition of the fee on its project contradicts... nexus and proportionality principles... The California Supreme Court has clarified that the heightened scrutiny applicable to a monetary exaction imposed ad hoc...does *not* apply to a challenge involving the quasi-legislative application of developer fees....

Tanimura, supra, at 801.

II. THE CALIFORNIA LEGISLATURE HAS ABETTED THE REFUSAL OF THE STATE COURTS TO COMPLY WITH SUPREME COURT HOLDINGS.

That the MFA flatly prohibits precisely the heightened scrutiny mandated by *Dolan* is unsurprising. That has long been one of its chief purposes.

The MFA was in the legislative drafting process when this Court decided *Nollan* in 1987. It was enacted not to codify *Nollan* but to avoid it. Since then, the Legislature has resisted any effort to amend the MFA to apply heightened scrutiny to legislatively enacted impact fees. It is therefore clearly erroneous for the court below to have found that statutory MFA “compliance” is equivalent – “as a matter of law” – to satisfying constitutional heightened scrutiny.¹⁹

Assembly Bill 1600 (AB 1600) was introduced in the California Legislature on March 5, 1987. (Stats. 1987, Ch. 927.) As introduced, the bill would have created a statutory nexus standard materially more stringent than the existing California standard. The introduced bill would have required “specific findings” with respect

19. Or for the Solicitor General to have argued the same point in its *amicus* brief in *Sheetz* when it told this Court that California “state law already provide[s] sufficient protection” against excessive impact fees on new housing. The brief represented that the MFA’s standard is “parallel” to heightened scrutiny. [p.33]. Of course, two standards related to the same variables can be “parallel” to each other while being substantially different in rigor, and that is true of the MFA’s standard and heightened scrutiny. *Brief for The United States as Amicus Curiae Supporting Respondent*, p.33.

to “a particular development project” and the necessity for the fee “created by the proposed development project.”²⁰ The enacted version deleted all of the language demanding a causal link between an individual project and its direct impacts and replaced it with the current statutory language requiring only an indirect or theoretical connection.

The Legislature has subsequently defended against attempts to amend and update the MFA to comport with *Dolan*. In 1996, in direct response to the California Supreme Court’s *Ehrlich* decision, legislation was introduced to abrogate the opinion and codify *Dolan*. Assembly Bill 3081 would have amended subdivision (b) of Section 66001 to replace the MFA’s “reasonable relationship” test with *Dolan*’s “roughly proportional” standard.

However, the Legislature rejected that language and AB 3081’s amendments to subdivision (b) of Section 66001 were stricken, thereby retaining the existing reasonable relationship statutory standard. Since then, the Legislature has on several more occasions rejected incorporating *Dolan* into the MFA. In 1999, the Legislature rejected SB 153 (1999, Haynes) that would have added new Ch. 9.5 to the Government Code to require that any exaction “have a direct relationship to the public burdens imposed by, and to be roughly proportional in nature and extent to the impact of the

20. Assembly Bill No. 1600, as Introduced March 5, 1987. *Amici* would offer to provide admissible documentary evidence demonstrating the relevant legislative history of the MFA in connection with its Brief on the Merits, if certiorari is granted.

proposed activity....” In 2005, the Legislature rejected SB 321 (2005, Morrow) which would have amended the MFA to explicitly place the burden of proof on the local agency to produce evidence to justify a development fee. And in 2019, the Legislature rejected AB 1484 (2019 Grayson) which would have amended the MFA to require that any “housing impact requirement” (including impact fees) be roughly proportional to the project’s impact on public facilities.

The California courts have consistently held not only that the MFA does not demand rough proportionality, but also that it affirmatively proscribes any sort of proportionality determination with respect to a specific project and the impacts it is required to mitigate in the case of legislatively imposed development fees.²¹ The opinion below continues that constitutionally-incompatible practice.

21. The Executive Branch has also played a role in perpetuating the California standard’s applicability to the large universe of legislatively established exactions imposed as mitigation measures under the California Environmental Quality Act (CEQA). *See* Cal. Code of Regs., tit. 14 § 15126.4 (a) (Describing *Nollan* as requiring only a “connection” between the mitigation measure and a legitimate governmental interest; (b) Relying on *Ehrlich, supra*, for the proposition *Dolan*’s rough proportionality requirement applies only where a monetary exaction is imposed on an individual ad hoc basis.

III. CERTIORARI SHOULD BE GRANTED TO PREVENT THE UNCONSTITUTIONAL PRACTICES OF SOME STATES, LIKE CALIFORNIA, WHICH MAKE HOMES AND HOUSING UNATTAINABLE

Impact fees – “charges levied on builders as a condition of development – are higher in California than the rest of the country.”²²

“California home prices far exceed the rest of the country. California home prices continue to be much more expensive than the rest of the U.S. ... more than twice as expensive as the typical mid-tier U.S. home.”²³

Cause and effect.

Today, the level of impact fees and other exactions imposed on new housing in California is staggering. Park and recreation fees can exceed \$75,000 for a single-family detached home and over \$50,000 per unit for a small multifamily unit in an apartment building.²⁴ At least one

22. “*California’s High Housing Costs: Causes and Consequences*,” published by the California Legislative Analyst’s Office (March 2015).

23. “*California Housing Affordability Tracker* (4th Quarter 2025)” posted by the California Legislative Analyst’s Office [“LAO”] on January 22, 2026. <https://lao.ca.gov/LAOEconTax/Article/Detail/793>.

24. City of Sunnyvale, *Development Impact Fee Schedule* (<https://www.sunnyvale.ca.gov/business-and-development/planning-and-building/permit-center/applications-fees-and-forms#docaccess-383c9d90f68f968336f964ff319598971171dfc12234541bd134954fef54eb3e>).

city charges “affordable housing in-lieu fees” at a rate of more than \$99 per square foot on proposed new single-family homes. The overall “fee load” on a new house can exceed \$200,000.²⁵

Jurisdictions that follow the California standard with respect to legislatively imposed fees also impose disproportionately high impact fees, resulting in similar affordability crises. In Oregon for example, fees in some jurisdictions now exceed \$97,000 per unit.²⁶

Yet in other states such as Texas, where heightened scrutiny applies to legislatively mandated monetary exactions, impact fees are substantially more restrained. According to a 2025 report by the RAND Center on Housing and Homelessness:

[V]irtually all local jurisdictions in California... charge multiple fees for indirectly related costs, such as...the estimated effects of new development on traffic and other factors, including fees related to conjectured negative impacts of new housing on housing affordability....

25. City of Livermore, *2023-2031 Housing Element, Identification and Analysis of Fees and Exactions Imposed on New Housing*, at pp.3-42 to 3-49(2023) (<https://www.livermoreca.gov/home/showpublisheddocument/10080/638156173818800000>); See also, *City of Palo Alto Development Impact and In-Lieu Fees (as of August 18, 2025)* at <http://www.paloalto.gov/files/assets/public/v/4/development-services/planning-review/6.-planning-fees/fy26-impact-fee-information-sheet.pdf>.

26. City of Wilsonville, *System Development Charges*, <https://www.wilsonvilleoregon.gov/building/page/system-development-charges-sdcs-estimate-fees-sdc-calculator>.

Rand Center on Housing and Homelessness, *The High Cost of Producing Multifamily Housing in California* (2025), at p. 28.

The Rand study found that overall, these indirect development fees imposed on multifamily housing in California are roughly 10 to 40 times the fee levels in Texas. *Id.* at p.vi. Importantly, these indirect fees are uniformly imposed via the same type of problematic “hypothesized” nexus study process as the fee in the instant case.

This wide disparity in fees amongst jurisdictions within the same nation challenges the assertion that applying heightened scrutiny to legislatively imposed monetary exactions is a “prophylaxis in search of a problem.”²⁷

CONCLUSION

The actions of the California courts in this case are part of a longstanding pattern and practice of resisting the letter and spirit of this Court’s Takings cases. As a Justice of the California Supreme Court observed over 25 years ago: “The more things change, the more things stay the same. That is certainly true with respect to this court’s takings jurisprudence.” *Landgate, Inc. v. California Coastal Comm’n*, 17 Cal.4th 1006, 1035 (Brown, J., dissenting). Justice Brown described as “judicial impudence” the state high court’s “grudging lip service” to this Court’s Takings precedents and its “unwilling[ness] to come to terms with the[ir] true meaning.” (*Id.* at 1035-1041 (Brown, J., dissenting).)

27. *Koontz v. St. Johns River Water Management Dist.*, 570 U.S. 595, 628-629 (2013) (Kagan, J., dissenting).

The corrosive effect of this “judicial impudence” is felt not just in California but other jurisdictions. It is national in scope.

The California courts’ consistent embrace of the views, reasoning, and even outright conclusions of this Court’s *dissenting* opinions unjustifiably gives them “new life.” As explained by Justice Chin of the California Supreme Court:

In his dissent in *First English*, Justice Stevens articulated the precise argument on which the majority relies here A majority of the high court considered Justice Stevens’ argument *and rejected it*. Now, the same argument has found new life in the majority opinion here.

Landgate, supra, at 1033-1034 (Chin, J., dissenting) (original emphasis).

Federal and state courts then erroneously rely on the California authorities to spread this Court’s newly-revived *dissents*, as though they are controlling. *See, e.g., Ballinger v. City of Oakland*, 398 F.Supp.3d 560, 571-572 (N.D. Cal. 2019), *aff’d* 24 F.4th 1287 (9th Cir. 2022); *Knight v. Metropolitan Government of Nashville and Davidson County*, 572 F.Supp.3d 428, 440 (M.D. Tenn. 2021), *rev’d and remanded sub nom. Knight v. Metropolitan Government of Nashville & Davidson County, Tennessee*, 67 F.4th 816 (6th Cir. 2023); *D. R. Horton, Inc. v. Curb North, Inc.*, 2008 WL 1140978, at *17; *West Linn Corporate Park, L.L.C. v. City of West Linn*, 349 Or. 58, 83 (2010); *Tualatin Hills, supra*, 185 Or.App. 729, 739 (2003); *Rogers Machinery, Inc. v. Washington County*, 181 Or.App.369,

389 (2002) (“The California Supreme Court’s decision in *Ehrlich v. City of Culver City...*, together with its more recent decision in *San Remo Hotel v. City & County of San Francisco*, provides one of the more in-depth and thoughtful discussions of the reason for...declin[ing] to use *Dolan*’s heightened scrutiny in testing development or impact fees imposed... pursuant to legislatively adopted fee schemes.”)

For the sake of the millions of people in states like California, where courts thumb their judicial noses at this Court’s Fifth Amendment jurisprudence – and whose citizens are thereby forced to surrender fundamental constitutional rights or suffer the burdens of excessive fees and exactions in order to find homes – the Court should GRANT the Petition for Certiorari and end this decades-long resistance once and for all.

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