No. 25-958

In the Supreme Court of the United States

GEORGE SHEETZ, PETITIONER

v.

COUNTY OF EL DORADO, CALIFORNIA

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

BRIEF IN OPPOSITION

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QUESTIONS PRESENTED

Two years ago in this case, the Court held that the Fifth Amendment's Takings Clause "prohibits legislatures and agencies alike from imposing unconstitutional conditions on land-use permits." *Sheetz v. County of El Dorado*, 601 U.S. 267, 279 (2024). Permit conditions imposed by legislatures, therefore, must satisfy the "essential nexus" and "rough proportionality" requirements set forth in *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994).

On remand, the California Court of Appeal applied *Nollan* and *Dolan* to traffic-impact fees imposed by a county legislature. In doing so, the Court of Appeal determined that the county had satisfied its burden to show that the fees for single-family residential properties were "roughly proportional," in both nature and extent, to the projected impacts of such properties on traffic congestion in the relevant area.

The questions presented are:

1. Did the Court of Appeal err in applying *Nollan* and *Dolan* to a traffic-impact fee imposed on single-family residential properties?

2. Did the Court of Appeal err in rejecting the forfeited, factbound, and incorrect argument that the County improperly shifted monetary responsibility to single-family residential properties for traffic impacts caused by commercial properties?

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INTRODUCTION

When the Court first considered this case two years ago, it resolved a legal question that had divided state courts: whether land-use permit conditions imposed by legislatures, as opposed to administrative agencies, are subject to scrutiny under *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994). The Court answered that question in the affirmative, holding that legislatively imposed permit conditions must satisfy the "essential nexus" and "rough proportionality" requirements of *Nollan* and *Dolan*. *See Sheetz v. County of El Dorado*, 601 U.S. 267, 279 (2024).

On remand, the California Court of Appeal duly applied *Nollan* and *Dolan* to the legislative permit condition at issue: a traffic-impact fee imposed on specific classes of new development using a formula-based schedule. Applying "heightened scrutiny," the Court of Appeal required the County to show that the fee was "roughly proportional," in both nature and extent, to the projected impact of the relevant class—single-family residential developments—on local traffic congestion. *See* Pet. App. 16a, 45a-47a.

There is no dispute that the Court of Appeal correctly identified and articulated the governing legal rules set forth in *Nollan*, *Dolan*, and *Sheetz*. Petitioner takes issue only with how those rules were applied on remand to the particular facts of his case. The Court should decline to entertain his factbound challenge to the decision below for multiple reasons.

First, both questions presented are based on inaccurate characterizations of the Court of Appeal's analysis. In his first question presented, for example, petitioner says the Court of Appeal did not require the County to provide evidence that the fee was roughly proportional to the projected impacts of the proposed development. In reality, however, the Court of Appeal did exactly that. Likewise, the second question presented is based on the erroneous premise that the Court of Appeal allowed the County to shift projected costs from one class of development to another; in fact, the Court of Appeal did no such thing.

Second, petitioner has not identified any legal conflict for this Court to resolve. There is no conflict with any of this Court's precedents, for starters, because this Court has never considered how to apply *Dolan* to the type of permit condition at issue here: a formula-based fee imposed on a class of new development. The Court declined to decide that issue in *Sheetz*, expressly leaving open the question "whether a permit condition imposed on a class of properties must be tailored with the same degree of specificity as a permit condition that targets a particular development." 601 U.S. at 280. And as Justice Kavanaugh pointed out in his concurrence, this Court has never "address[ed] or prohibit[ed] the common government practice of imposing permit conditions, such as impact fees, on new developments through reasonable formulas or schedules that assess the impact of classes of development rather than the impact of specific parcels of property." *Id.* at 284.

There is likewise no division in the lower courts on either of the two questions presented. The absence of conflict is not surprising because, until two years ago, it was not clear that *Dolan* had *any* application to permit conditions legislatively imposed on classes of development. The question of how to measure "rough proportionality" in the context of class-based fees is now percolating in the lower courts, a clarifying process that should be allowed to play out.

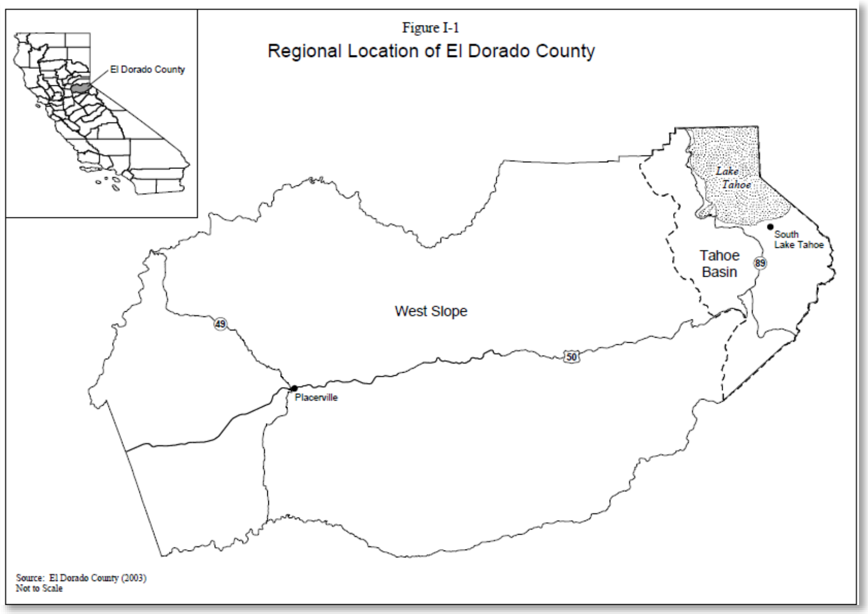
Third, even if petitioner had identified a certworthy question, this case would be a poor vehicle to answer it. The Court of Appeal's decision was depublished by the California Supreme Court, which means it cannot be cited as authority and will have no impact on the development of the law. Further, to address either of the two questions presented, the Court would first have to decide a threshold issue Justice Sotomayor identified two years ago that petitioner doesn't mention: whether the permit condition would be a compensable taking if imposed outside the permitting context. There are also serious forfeiture issues that would likely frustrate this Court's review.

In short, there is no sound reason for this case to boomerang straight back to this Court. The petition should be denied.

STATEMENT

A. Factual Background

1. El Dorado County is a largely rural county in California that lies east of Sacramento and extends to the Nevada border.



AR1147.

2. To accommodate a growing population, the County has worked to expand its public infrastructure, including its roads and water systems. *See, e.g.*, AR1448-1455, 1683.

In 2004, pursuant to its obligations under state planning law, the County's Board of Supervisors—its legislative body—adopted a new "General Plan" for public services. AR67-73.[1] To address traffic congestion, the General Plan requires developers to pay a traffic-impact fee as a condition of receiving a building permit. The fees "pay for the portion of road capacity improvements . . . necessary to offset and mitigate the traffic impacts reasonably attributable to new development." AR1227-1228.

3. To enact the traffic-impact fee schedule at issue here, the County's Department of Transportation commissioned several expert studies relating to new development. AR1229.

a. The Department's experts first projected growth attributable to new development across a "20-year time horizon." AR1950-1959, 3517. Then traffic-modeling experts, applying "industry standard" methods, AR2348, identified "basic road system improvement needs resulting from the growth forecasted," AR3517. That work was split into two portions, with one analysis covering County roads and state highways, and another analysis focusing on the "County's main transportation corridor," U.S. Route 50. AR3517-3518. Both analyses identified specific road-improvement projects necessary to accommodate projected increases in traffic from new development. AR2291-2297, 2354-2432.

The costs of those projects were estimated using a methodology that accounted for scale, construction materials, traffic control, earthwork, and local terrain. AR2344-2348, 3518-3519.

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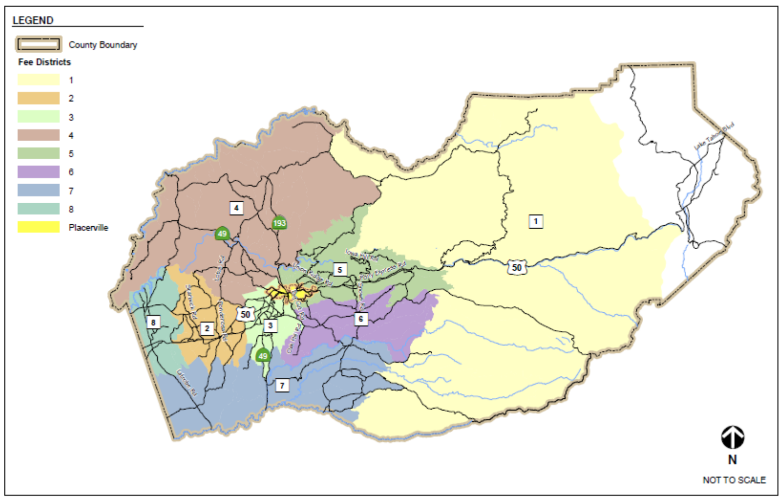
[1] *See also Adopted General Plan*, El Dorado Cnty., https://tinyurl.com/9rvkfjfv (last visited Apr. 27, 2026).

b. The Department allocated the costs across various categories of anticipated development using an "eight-zone structure" that divided the County along geographic lines based on the "different land use characteristics of various areas of the County." AR3516.



AR2051.

The Department's experts calculated the "percent of new traffic (growth)" attributable to each zone. AR2313-2314. Those apportionments were tied to specific road segments throughout the County. AR2315-2331.

c. "[N]umerous calculations" went into setting the fee rates. AR3521. First, the "cost for each individual [traffic improvement] project was adjusted based on the availability of" alternative sources of funds, including federal and state grant funding, such that new development would pay only a portion of the overall costs. AR3521. That portion of costs was "spread to each of the eight fee zones proportionally" based on each zone's contribution to the increased traffic necessitating the project. AR3521.

Fee rates for categories of development projects were calculated by dividing the "total costs [of all traffic improvement projects] for each zone" by the "projected growth" of each category and the "applicable trip generation rates for each use." AR3521. As a result, the fees accounted for the differing traffic impacts attributed to different types of developed property. For example, because expert analysis indicated that single-family homes, regardless of size, have "trip generation rates" that fall within a small range, AR2114, the County adopted a standard fee for that class of properties. In contrast, because "trip generation rates" for commercial buildings vary vastly by size and occupancy, the County adopted a per-square-foot rate formula for those properties. AR3543-3551.

d. The upshot of the Department's work was a series of fee schedules covering eight traffic-impact zones and eleven categories of development. AR3543-3551. The Board of Supervisors enacted the fee schedules in 2006 and updated them various times to account for, among other things, completed work and changes in project costs. *See, e.g.*, AR119-215.

In 2012, the schedule for Zone 6—at issue here—was:

Project	Highway 50 Component	Local Road Component	Fee Total
Single-family Residential	$2,260	$21,160	$23,420
Multi-family Residential (per unit)	$1,480	$13,760	$15,240
High-Trip Commercial (per sq. foot)	$1.98	$16.02	$18.00
General Commercial (per sq. foot)	$0.92	$7.40	$8.32
Office (per sq. foot)	$0.23	$1.89	$2.12
Industrial (per sq. foot)	$0.15	$1.20	$1.35
Warehouse (per sq. foot)	$0.07	$0.61	$0.68
Gas Station (per pump)	$920	$7,390	$8,310
Golf Course (per hole)	$757	$6,090	$6,847
Campground (per campsite)	$297	$2,390	$2,687
B&B (per rented room)	$149	$1,210	$1,359

AR251.

5. In 2013, petitioner purchased property within Zone 6, a "Rural Region" with "limited availability of infrastructure and public services." AR1461-1462.

In 2016, petitioner applied for a building permit for a single-family residence. AR5063-5070. Pursuant to the 2012 fee schedule, he was charged the fee applicable to his zone and development type: $23,420. AR5071. Petitioner paid that fee under protest and received his permit. AR5082-5084.

B. Procedural Background

1. Petitioner challenged the fee in California superior court. "He claimed, among other things, that conditioning the building permit on the payment of a traffic impact fee constituted an unlawful 'exaction' of money in violation of the Takings Clause." *Sheetz*, 601 U.S. at 272.

2. The trial court rejected petitioner's claim and the California Court of Appeal affirmed. *See Sheetz v. County of El Dorado*, 84 Cal. App. 5th 394 (2022), *vacated*, 601 U.S. 267 (2024). Relying on precedent from the California Supreme Court, the Court of Appeal held that the *Nollan/Dolan* test applies only to permit conditions imposed "'on an individual and discretionary basis.'" *Id.* at 406 (quoting *San Remo Hotel L.P. v. City & County of San Francisco*, 27 Cal. 4th 643, 666-670 (2002)). Fees imposed on "a broad class of property owners through legislative action," it said, need not satisfy that test. *Id.* at 407. The California Supreme Court denied review.

3. Petitioner petitioned for certiorari, which this Court granted to resolve a split in the state courts "on the question whether the Takings Clause recognizes

a distinction between legislative and administrative conditions on land-use permits." *Sheetz*, 601 U.S. at 273.

a. The Court held that "[t]he Takings Clause does not distinguish between legislative and administrative permit conditions." *Id.* at 271. "The Constitution's text," the Court explained, "does not limit the Takings Clause to a particular branch of government." *Id.* at 276. Indeed, "history shows that legislation was a prime target for scrutiny under the Takings Clause." *Id.* at 278. And this Court's precedents have not "distinguish[ed] between legislation and other official acts." *Ibid.* To the contrary, in both physical and regulatory takings cases, the Court has scrutinized "legislation and administrative action" alike. *Ibid.*

The Takings Clause thus prohibits both legislatures and agencies "from imposing unconstitutional conditions on land-use permits," which means the requirements of *Nollan* and *Dolan* apply to all such conditions. *Id.* at 279.

The Court vacated the judgment and remanded for further proceedings. *Id.* at 280. In doing so, the Court noted that it was "not address[ing] the parties' other disputes over the validity of the traffic impact fee, including whether a permit condition imposed on a class of properties must be tailored with the same degree of specificity as a permit condition that targets a particular development." *Ibid.* Such questions, the Court explained, were "for the state courts to consider in the first instance." *Ibid.*

b. Several Justices wrote opinions concurring in the unanimous judgment.

Justice Sotomayor, joined by Justice Jackson, observed that *Sheetz* did not address "an important threshold question to any application of *Nollan/Dolan* scrutiny: whether the permit condition would be a compensable taking if imposed outside the permitting context." *Id.* at 280-281. The Court's opinion left that "antecedent question" unresolved. *Ibid.*

Justice Gorsuch separately considered whether the *Nollan/Dolan* test would "operate[] differently when an alleged taking affects a 'class of properties' rather than 'a particular development.'" *Id.* at 282. In Justice Gorsuch's view, the "same constitutional rules" would apply in both circumstances, as "[n]othing about th[e] test depends on whether the government imposes the challenged condition on a large class of properties or a single tract or something in between." *Ibid.*

Justice Kavanaugh, joined by Justices Kagan and Jackson, "underscore[d] that the Court [had] not previously decided"—and had expressly declined to decide in *Sheetz*—"whether 'a permit condition imposed on a class of properties must be tailored with the same degree of specificity as a permit condition that targets a particular development.'" *Id.* at 284. "[N]o prior decision of this Court," Justice Kavanaugh explained, had "addressed or prohibited" the "common government practice of imposing permit conditions, such as impact fees, on new developments through reasonable formulas or schedules that assess the impact of classes of development rather than the impact of specific parcels of property." *Ibid.* Both *Nollan* and *Dolan*, for example, "considered permit conditions tailored to specific parcels of property." *Ibid.* "Those decisions," therefore, "had no occasion to address" formula-based fees imposed on classes of development. *Ibid.* And the Court's opinion in *Sheetz*, Justice Kavanaugh emphasized, did not "address or prohibit" the longstanding government practice of imposing such fees. *Ibid.*

4. On remand, the California Court of Appeal carefully followed this Court's instructions in *Sheetz*.

a. The Court of Appeal first recognized the holding in *Sheetz*—i.e., that "the requirements of *Nollan* and *Dolan* apply to land-use exactions (including impact fees) imposed by legislators *and* administrators, meaning that the takings clause 'prohibits legislatures and agencies alike from imposing unconstitutional conditions on land-use permits.'" Pet. App. 5a-6a (quoting *Sheetz*, 601 U.S. at 279-280).

b. The Court of Appeal then "address[ed] the threshold or antecedent question Justice Sotomayor identified in her concurring opinion": whether the traffic-impact fee would have been a compensable taking if imposed outside the permitting process. Pet. App. 19a. The Court of Appeal answered that question in the affirmative because, it reasoned, the fee "is a government-imposed financial obligation that burdened Sheetz's ownership of his real property." Pet. App. 22a. It is therefore "a monetary exaction that must satisfy the 'essential nexus' and 'rough proportionality' requirements of *Nollan* and *Dolan* to withstand a constitutional challenge under the takings clause." *Ibid.*

c. Proceeding to the *Nollan/Dolan* analysis, the Court of Appeal found that "an 'essential nexus' exists between the County's legitimate interest in reducing traffic congestion from new development and the permit condition requiring Sheetz to pay a fee to mitigate or offset the traffic impacts from his proposed development project." Pet. App. 28a-29a. "[R]educing traffic congestion," the Court of Appeal explained, was held in *Dolan* to be "a legitimate government interest in the land-use regulation context." *Id.* at 29a (citing *Dolan*, 512 U.S. at 387). "And there is a logical connection between the County's legitimate government interest and the challenged [traffic impact] fee" because "increased population from new residential development places additional burdens on the County's public roadway system." *Ibid.* "Indeed," the Court of Appeal observed, "the Supreme Court has described a permit condition of this nature—a condition that insists 'landowners internalize the negative externalities of their conduct'—as 'a hallmark of responsible land-use policy.'" *Id.* at 30a (quoting *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 605 (2013)).

d. The Court of Appeal next considered whether "the County [had] show[n] that the challenged permit condition" was "roughly proportional to the projected impacts of Sheetz's proposed development project on traffic congestion." Pet. App. 45a. In conducting that analysis, the Court of Appeal underscored that it was applying the "intermediate standard of judicial scrutiny" adopted in *Dolan*, which requires a showing that the challenged condition "'is related both in nature and extent to the impact of the proposed development.'" Pet. App. 41a-42a (quoting *Dolan*, 512 U.S. at 391). The Court of Appeal recognized that although *Dolan* doesn't require a "'precise mathematical calculation,'" the government "must nevertheless 'make *some effort to quantify its findings* in support of the [exaction]' beyond mere conclusory statements that it will mitigate or offset some anticipated public impacts created by the project.'" *Ibid.* (quoting *Dolan*, 512 U.S. at 395-396).

Having set forth the rough-proportionality standard, the Court of Appeal addressed the question expressly left open in *Sheetz*: "'whether a permit condition imposed on a class of properties must be tailored with the same degree of specificity as a permit condition that targets a particular development.'" Pet. App. 45a (quoting *Sheetz*, 601 U.S. at 280).

The Court of Appeal began by "agree[ing] with Justice Gorsuch that the *Nollan/Dolan* test does not 'operate[] differently'" when a land-use exaction affects "a class of properties rather than a particular development." Pet. App. 45a-46a (quoting *Sheetz*, 601 U.S. at 282 (Gorsuch, J. concurring)). "[T]he same constitutional rules apply whenever the government seeks to offset the public costs of new development through land-use exactions, regardless of whether the exaction (e.g., impact fee) is generally applicable to a class of permit applicants (as here) or is imposed on an individual basis in connection with a specific development project." Pet. App. 46a.

But concluding that the same constitutional rules apply, in the Court of Appeal's view, didn't explain how to measure rough proportionality in the context of an impact fee imposed on a class of development, rather than on a parcel-specific basis. Pet. App. 46a. The Court of Appeal reasoned that, with respect to formula-based fees imposed on specific types of development, "the *Dolan* standard logically requires a reviewing court to determine whether the amount of the fee is sufficiently tailored—i.e., roughly proportional (or proportionally related) in nature and extent—to the overall impact the *specific type of development* has on the government's land-use interest." Pet. App. 46a-47a (emphasis added). In other words, the relevant question is whether the fee is appropriately tailored to the impacts of the *class of development*—not the impacts of a *specific property*.

For guidance on how to assess tailoring in the context of a class-based impact fee, the Court of Appeal looked to California law, which has developed a "procedural or program-level approach." Pet. App. 53a. Under that approach, "a local government has the initial burden of producing evidence sufficient to demonstrate that it used a valid method for imposing the fee in question, one that established a reasonable relationship between the fee charged and the burden posed by the development." Pet. App. 54a (quotation marks omitted). "[I]f the government's evidence is sufficient, the plaintiff must establish a requisite degree of belief in the mind of the trier of fact or the court that the fee is invalid, e.g., that the fee's use and the need for the public facility are not reasonably related to the development project on which the fee is imposed or the amount of the fee bears no reasonable relationship to the cost of the public facility attributable to the development." Pet. App. 55a (brackets omitted).

The Court of Appeal found that this approach closely tracks "the *Nollan/Dolan* test, including the 'rough proportionality' requirement established in *Dolan*." Pet. App. 55a. It is also essentially the same, the Court of Appeal explained, as the one employed by the Ohio Supreme Court in *Home Builders*

Association of Dayton and the Miami Valley v. City of Beavercreek, 89 Ohio St. 3d 121 (2000)—a decision cited with approval in *Koontz*, 570 U.S. at 618. *See* Pet. App. 51a.

Applying this framework, the Court of Appeal "conclude[d] the County met its initial burden to demonstrate that it used a valid method for imposing the [traffic impact] fee, one that established a reasonable relationship between the fee charged and the projected burdens (i.e., social costs or public impacts) of Sheetz's development of a single-family home in geographic Zone 6." Pet. App. 58a. Among other things, "[t]he amount of the fee imposed on a specific type of development was based on a travel demand forecasting model, which determined the traffic contribution (vehicle trips) from each type of new development in a particular geographical zone as to each roadway segment." *Ibid.* Further, petitioner "failed to show that the record [did] not support the County's determinations regarding the reasonableness of the relationship between the magnitude of the [traffic-impact] fee and the public impacts of his development project." Pet. App. 59a.

e. Finally, the Court of Appeal turned to an argument it deemed forfeited. Pet. App. 59a.

Petitioner had argued, for the first time on remand, that the traffic-impact fee was unconstitutional because it placed greater burdens on single-family residential development as compared to other types of development. Pet. App. 61a. In particular, he maintained that the County improperly shifted 84 percent of the traffic-impact costs attributable to commercial development onto residential development. *Ibid.*

Despite believing this argument to be forfeited, the Court of Appeal found it to be meritless regardless. Pet. App. 60a-61a. The Court of Appeal explained that petitioner's unequal-burden argument was based on a misunderstanding of the record supporting the County's fee schedule. "[T]he fee program does not 'shift' 84 percent of the traffic mitigation costs attributable to new commercial development onto new residential development. Rather, the fee program requires that *all* new residential development—single-family *and* multifamily development—*collectively* pay for 84 percent of the *total costs* of the program, with nonresidential (e.g., commercial) development responsible for the remaining 16 percent of the costs." Pet. App. 62a. This distribution, the court explained, was based on expert analysis showing, among other things, that (i) about 60 percent of total costs were directly attributable to increased residential land use, and (ii) additional costs were indirectly attributable to increased residential land use because more residential housing creates the need for more local retail and similar commercial development. *Id.* at 62a-63a & n.14.

The Court of Appeal certified its opinion for publication under California Rule of Court 8.1105(c) and denied rehearing. Pet. App. 149a.

5. The California Supreme Court denied petitioner's petition for review and, on its own motion and without providing reasons, ordered the Court of Appeal's decision depublished. Pet. App. 150a. The

depublished decision "is not citable" and has no "binding or precedential effect." Cal. R. Ct. 8.1115(e)(3).

Petitioner timely petitioned this Court for a writ of certiorari.

REASONS FOR DENYING THE PETITION

The Court of Appeal did exactly what this Court told it to do on remand: apply *Nollan* and *Dolan* to a formula-based impact fee imposed on a particular class of development. There is no reason for this Court to review the depublished decision, which cannot be cited as authority and will have no impact on the development of the law.

I. THE COURT OF APPEAL PERFORMED PRECISELY THE ANALYSIS THIS COURT DIRECTED IN *SHEETZ*

At the outset, it is worth underscoring what all agree the Court of Appeal got right: It correctly stated this Court's holding in *Sheetz*; correctly employed the *Nollan/Dolan* test; correctly found that the County had shown the required essential nexus; and correctly described *Dolan*'s rough-proportionality standard, including the requirement that the County satisfy heightened scrutiny.

As petitioner concedes, the Court of Appeal "correctly stated this Court's holding" in *Sheetz*. Pet. 16. It recognized that "the requirements of *Nollan* and *Dolan* apply to land-use exactions (including impact fees) imposed by legislators *and* administrators, meaning that the takings clause 'prohibits legislatures and agencies alike from imposing unconstitutional conditions on land-use permits.'" Pet. App. 5a-6a (quoting *Sheetz*, 601 U.S. at 279-280).

The Court of Appeal proceeded to apply *Nollan* and *Dolan* to the legislative permit condition at issue, exactly as this Court instructed. In so doing, the Court of Appeal emphasized that the *Nollan/Dolan* test is "a type of 'heightened' or intermediate scrutiny" in which the burden to prove both an "essential nexus" and "rough proportionality" rests on the government. Pet. App. 16a, 50a.

Beginning with *Nollan*, the Court of Appeal found the County had shown an "essential nexus" between its "interest in reducing traffic congestion from new development and the permit condition requiring Sheetz to pay a fee to mitigate or offset the traffic impacts from his proposed development project." Pet. App. 28a-29a. Petitioner "does not challenge [this] nexus holding." Pet. 2 n.1.

Moving on to *Dolan*, the Court of Appeal considered whether "the County [had] show[n]" that the traffic-impact fee was "roughly proportional to the projected impacts of Sheetz's proposed development project on traffic congestion." Pet. App. 45a. The Court of Appeal underscored that the County must show the fee was roughly proportional "both in nature (type) and extent (magnitude)," and that the County could not "require a landowner to give up (here, pay) more than [was] necessary to mitigate the harm (social costs) resulting from the new development." Pet. App. 36a.

The Court of Appeal's description of the "rough proportionality" standard thus mirrors, almost verbatim, petitioner's own: "The rough proportionality test calls for heightened scrutiny and places the burden on the government to demonstrate that the amount of land or money exacted by the permit condition sufficiently reflects the 'nature and extent' of a proposed project's contribution to the problem." Pet. 18 (citation omitted). There is no disagreement on the proper standard.

II. THE QUESTIONS PRESENTED MISCHARACTERIZE THE COURT OF APPEAL'S DECISION

Because the Court of Appeal recognized and articulated the right legal standards, at every stage of the analysis, petitioner quarrels only with how those standards were applied to the facts of his case on remand. The application of correct legal standards to particular facts does not warrant this Court's review. And even if it were otherwise, both questions presented are based on mischaracterizations of the Court of Appeal's decision and would not warrant review for that independent reason.

A. Question One Mischaracterizes The Court Of Appeal's Application Of *Dolan*

The first question presented ("Question One") asks whether the "protection against unconstitutional permit conditions encompass[es] *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." Pet. i. The question is premised on the notion that the Court of Appeal placed the burden of proof on petitioner, failed to require evidence of rough proportionality, and focused myopically on the use of a legislative process.

At both steps of the analysis, the question mischaracterizes the Court of Appeal's opinion. The Court of Appeal did what petitioner claims it should have done: require the County to produce evidence "that its development permit exaction complies with *Dolan*'s 'rough proportionality' standard." Pet. i. There is accordingly no reason to grant review of Question One.

1. The Court of Appeal imposed the burden on the County to satisfy heightened scrutiny

The Court of Appeal explicitly recognized that the County bore the burden of proof: "*[T]he County has the burden* of demonstrating the required degree of connection—'rough proportionality'—between the challenged land-use exaction and burden or projected social costs/public impacts of Sheetz's proposed project." Pet. App. 50a (emphasis added). And it required—as it repeatedly emphasized—"the County to show" that the traffic-impact fee was "roughly proportional to the projected impacts of Sheetz's proposed development project on traffic congestion." Pet. App. 45a; *see also, e.g.*, *id.* at 46a, 48a, 54a, 55a.

To be sure, *after* requiring the County to show rough proportionality, the Court of Appeal gave petitioner the opportunity to rebut that showing. *See* Pet. App. 55a, 59a. But that's not the same as shifting the burden of proof. And it is no different from the interpretation of *Dolan* that petitioner advocates, which he contends "requires a burden on the government or an *opportunity for the applicant to show* that a particular parcel doesn't fit the class to which it has been assigned." Pet. 29 (emphasis added).

2. The Court of Appeal required the County to provide evidence of rough proportionality

The Court of Appeal also insisted the County point to evidence of rough proportionality. *See* Pet. App. 55a-56a ("[W]e conclude the administrative record includes sufficient *evidence* establishing that the challenged permit condition ([traffic impact] fee) satisfies the *Dolan* standard." (emphasis added)). The County's evidence included, among other things:

- Data on trip generation rates attributable to various types of new development from the Institute of Transportation Engineers' Trip Generation Manual, a nationally recognized industry reference guide.
- Data on the existing traffic levels on public roadway segments.
- Projections of population and employment growth.
- Estimates of the impact new development would have on traffic over a 20-year period.
- Estimates of the resources needed to complete infrastructure projects that would accommodate the increased traffic from new development.
- Expert technical reports quantifying the traffic impacts from each type of new development in the County's eight geographical zones.

Pet. App. 57a-59a.

Petitioner's claim that the Court of Appeal did not require evidence, and instead "rubberstamp[ed]" the traffic-impact fee simply because "the 'method' employed in creating [it] [was] rational," Pet. 2, appears to derive from what the Court of Appeal said in this sentence (and a few others like it):

> Applying the heightened scrutiny of *Dolan*'s "rough proportionality" standard, we conclude the County met its initial burden to demonstrate that it used a valid method for imposing the [traffic-impact] fee, one that established a reasonable relationship between the fee charged and the projected burdens (i.e., social costs or public impacts) of Sheetz's development of a single-family home in geographic Zone 6.

Pet. App. 58a; *see also id.* at 53a-54a (similar).

While the Court of Appeal referred to a "valid method" in that sentence, it also explained what it meant by a "valid method": one that *establishes a reasonable relationship* between the challenged fee and the projected burdens of the new development. In other words, the Court of Appeal did not consider "method" or "process" in isolation, as petitioner asserts. Indeed, it did not consider the County's legislative process (committee hearings, votes, etc.) at all. *Contra* Pet. 19-20. Rather, it asked whether the "method" would, as a matter of fact based on evidence, assign proportional burdens to properties with certain characteristics, based on evidence of their impacts. The question was thus whether the method *actually established* the requisite relationship—i.e., whether it showed an "*outcome* of rough proportionality," as petitioner puts it. Pet. 24.

3. The Court of Appeal, following *Dolan*, used the phrase "reasonable relationship" to mean "rough proportionality"

Petitioner also latches onto the phrase "reasonable relationship," which in his view signals that the Court of Appeal applied something akin to rational-basis review. *Cf.* Pet. i, 2, 3, 5, 16, 17, 19, 22, 29, 32. It did not.

The Court of Appeal explained that, following *Dolan*, it used "reasonable relationship" to mean "rough proportionality." *See* Pet. App. 39a-44a, 47a-55a. That language is drawn directly from *Dolan* itself. *Dolan* considered three possible standards for the required degree of tailoring: a lax "generalized statement" standard, an exacting "specific and uniquely attributable" standard, and an intermediate "reasonable relationship" standard. 512 U.S. at 389-391. It ultimately adopted the "intermediate position," though it decided to use the term "rough proportionality" to avoid confusion with the rational basis test. *Ibid.* That is, *Dolan* adopted the "reasonable relationship" standard under a different name.

Relatedly, petitioner and his amici focus on California's Mitigation Fee Act ("MFA"), which also uses the "reasonable relationship" language. Cal. Gov't Code § 66001. But the MFA is not at issue here and the decision below did not apply it. In any event, the California Supreme Court has interpreted the term "reasonable relationship" in the MFA "as imposing a requirement consistent with the *Nollan*/*Dolan* standard." *Ehrlich v. City of Culver City*, 12 Cal. 4th 854, 867 (1996).

Before *Sheetz*, this harmonizing interpretation was limited to administrative permit conditions, because California courts thought *Dolan* didn't extend to legislative conditions. *See id.* at 867-869 ("[I]n the wake of *Dolan* the term 'reasonable relationship' embraces both constitutional and statutory meanings which, for all practical purposes, have merged *to the extent* that the *Dolan* decision applies to development fees"—i.e., to fees imposed "in individual cases" on a discretionary basis.). But *Sheetz* clarified that *Dolan* extends to legislative conditions as well. Accordingly, the term "reasonable relationship" in the MFA must encompass *Dolan*'s "rough proportionality" standard in all contexts—just as the Court of Appeal said in this case. *See* Pet. App. 47a-56a.

B. Question Two Mischaracterizes The County's Fee Schedule And The Court Of Appeal's Analysis

The second question presented ("Question Two") is whether "an impact fee [can] 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)." Pet. i. This question, too, mischaracterizes the decision below.

Contrary to petitioner's suggestion, the Court of Appeal never held, *as a legal matter*, that shifting costs from one class of development to another is permissible under *Dolan*. Rather, it simply concluded that the traffic-impact fee did not, *in fact*, shift costs. The only question, therefore, is a wholly factual one: whether it is true, as petitioner claims, that the traffic-impact fee here imposed costs on residential developments for impacts caused by commercial developments.

It is not true. As the Court of Appeal explained, a technical report found that, based on trip generation rates, approximately 60 percent of the total traffic-mitigation costs were directly attributable to trips to and from residential properties. Pet. App. 62a-63a & n.14. The report also found that new residential development would create the demand for new local businesses, which in turn would necessitate additional traffic-mitigation projects. *Ibid.* The report found that the need for those additional projects was ultimately attributable to new residential development as well. *Ibid.*

In other words, costs were imposed on residential developments only to the extent expert analysis concluded they were responsible for those costs, not because the County decided to shift costs attributable to commercial development onto residential development. For that reason, petitioner's surface-level fee comparisons miss the nuance of the expert-based record analysis. *Cf.* Pet. 13-14.

Whether the particular cost-attribution analysis employed here was "correct" is a factual question that has no bearing on any other case. There is accordingly no reason to grant review on Question Two either.

III. THERE IS NO CONFLICT WARRANTING THIS COURT'S REVIEW

Petitioner's failure to identify any relevant legal conflict confirms that review is unwarranted. He claims that courts conflict on (i) "whether government can prove rough proportionality by showing a legitimate function of legislative power or must provide factual evidence in the record," and (ii) "whether and how to analyze proportionality between *classes* of development." Pet. 19, 28. There's no conflict on either of those questions.

A. There Is No Conflict With This Court's Precedents

Both questions presented are subsets of a bigger question: how to assess rough proportionality in the context of a formula-based fee imposed on classes of new development. This Court has never addressed that question, so the approach the Court of Appeal employed cannot conflict with any of this Court's precedents.

In *Sheetz*, this Court explicitly declined to decide "whether a permit condition imposed on a class of properties must be tailored with the same degree of specificity as a permit condition that targets a particular development." 601 U.S. at 280.

Justice Kavanaugh, joined by Justices Kagan and Jackson, wrote separately to underscore that the Court has not previously decided—and declined to decide in *Sheetz*—the degree of tailoring required for a permit condition imposed on a class of properties. *Id.* at 284. As Justice Kavanaugh explained, the Court has never "address[ed] or prohibit[ed] the common government practice of imposing permit conditions, such as impact fees, on new developments through reasonable formulas or schedules that assess the impact of classes of development rather than specific parcels of property." *Id.* at 284. "Both *Nollan* and *Dolan*," for example, "considered permit conditions tailored to specific parcels of property" and thus had "no occasion to address" formula-based fees imposed on classes of development. *Ibid.* The required degree of tailoring, therefore, is an open question with no decision that could give rise to a conflict.

B. There Is No Conflict In The Lower Courts

There is likewise no relevant or meaningful conflict among the state high courts or federal courts of appeal.

1. There is certainly no conflict on Question Two, which does not even pose a legal question. Question Two is a transparent request for fact-based error correction of the most fact-intensive form. It calls for a deep dive into traffic-impact studies and the allocation of costs among different classes of development.

Indeed, while petitioner claims that "[c]ourts conflict on whether and how to analyze proportionality between *classes* of development," Pet. 29, he cites only two cases in that section of his petition. The first is not a takings case; it considered "whether police may conduct a search based on less than probable cause of an individual released while awaiting trial." *United States v. Scott*, 450 F.3d 863, 864 (9th Cir. 2006).

The second case, *Puce v. City of Burnsville*, 997 N.W.2d 49 (Minn. 2023), does not conflict with the Court of Appeal's decision; in fact, the analysis in both cases is quite similar. *Puce* held that "[a] city can justify its imposition of a percentage-based formula on a particular class of properties if it can show that the revenue to be raised from such a fee is reasonably necessary for the development of parks, playgrounds, trails, wetlands, or open space in response to anticipated commercial development in the city—in other words, that the fee reflects, or is roughly proportional, to the amount necessary to counter the impact of the expected developments." *Id.* at 59. And it further held that a city "may permissibly determine the appropriate percentage at a level of generality higher than each individual property through, for instance, a comprehensive study." *Ibid.* *Puce* is thus entirely consistent with the Court of Appeal's decision. Moreover, *Puce* didn't consider alleged inequitable burdens on different classes of property, which is the focus of Question Two.[2]

2. There is no conflict on Question One either. Again, that question is based on the false premise that the Court of Appeal did not require "evidence" of rough proportionality. The Court of Appeal *did* require such evidence, so cases *also* requiring such evidence are not in conflict.

In *Mira Mar Development Corporation v. City of Coppell*, for example, the Texas Court of Appeals found that the city had not satisfied *Dolan* when it offered nothing but a "bare conclusion lacking any factual support" that construction-inspection fees were

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[2] To be sure, because the fee in *Puce* was in lieu of an actual dedication of land, the court also held that the fee should "be calculated based on the assessed value of the land that would have been dedicated." 997 N.W.2d at 59. But the traffic-impact fee here is not an in-lieu-of fee, so that requirement wouldn't make sense in this case (and petitioner doesn't contend otherwise).

roughly proportional to inspection costs. 421 S.W.3d 74, 97 (Tex. App. 2013). That conclusion is both correct and not in conflict with the Court of Appeal's decision here.

Similarly, in *Kogap Enterprises, Inc. v. City of Medford*, No. 24-5268, 2025 WL 3172310 (9th Cir. Nov. 13, 2025), the Ninth Circuit found that the city had failed to show that a permit condition requiring a developer to extend a roadway was roughly proportional to the impact of the development where the city "failed to provide evidence . . . that it had measured the alleged traffic distribution impacts of the new proposal." *Id.* at *1. That conclusion, too, is correct and fully consistent with the decision below.

3. There is also no conflict on a question petitioner raised two years ago but does not squarely present here: whether *Dolan* requires individualized assessments of *specific parcels*, as opposed to *specific classes*.

In his merits brief in *Sheetz*, petitioner argued that *Dolan* requires "an *individualized determination* of the impact his manufactured house would have on the need for road improvements." Br. for Pet'r at 26, *Sheetz* (No. 22-1074), 2023 WL 7928265 (emphasis added); *see also id.* at 27 (same). Several of petitioner's amici reprise that argument this go-around. A group of amici led by the Texas Public Policy Foundation, for example, argue that *Dolan* requires individualized assessments of specific parcels of property. Amici Curiae Br. of Texas Public Policy Foundation et al. 4.

But petitioner does not renew that argument in his petition. Although he quotes the "individualized determination" language from *Dolan* (Pet. 3, 22), he does not argue that, in the context of formula-based fees imposed upon classes of development, *Dolan* requires parcel-specific assessments of every impact fee. To the contrary, he says that "the legislature may broadly designate fees that apply to different classes of property" so long as courts (i) "place a burden on the government" to provide evidence of rough proportionality, or (ii) provide "an opportunity for the applicant to show that a particular parcel doesn't fit the class to which it has been assigned." Pet. 29.

4. Even if petitioner had raised the specific-parcel issue, there is no meaningful conflict on that question either. Indeed, most of the cases petitioner and his amici cite support the position that, in the context of formula-based fees imposed on classes of property, *Dolan* does *not* require a parcel-specific analysis. And no case holds otherwise.

a. Most of the cases cited in the petition employed a framework remarkably similar to the one at issue here, which examines whether the record evidence supports the fees associated with classes or categories of property. Far from creating a conflict, those decisions reinforce the soundness of the Court of Appeal's approach.

Most notably, in *Beavercreek*, 89 Ohio St. 3d 121—a case the Court cited with approval in *Koontz*, 570 U.S. at 618—the Ohio Supreme Court upheld "a system of impact fees payable by developers of real estate to aid in the cost of new roadway projects." 89 Ohio St. 3d at 124. The city was required to prove "a reasonable relationship between the impact fee" and "the benefits accruing to the developer from the construction of new roadways." *Id.* at 128. Relevant factors in assessing the required "reasonable relationship" included the cost of new roadways and the formula used to determine the fee. *Ibid.* The Ohio Supreme Court did not require a parcel-specific analysis.

Likewise, in *Northern Illinois Home Builders Association v. County of Du Page*, 165 Ill. 2d 25 (1995), the Illinois Supreme Court upheld a statute that used a fee formula "based upon generally accepted traffic engineering practices," even though the statute did not "consider[] the particular characteristics of a specific development." *Id.* at 35-36 (quotation marks omitted).

The decision in *Anderson Creek Partners, L.P. v. County of Harnett*, 382 N.C. 1 (2022), is similar. The North Carolina Supreme Court concluded that "a schedule of rents, rates, fees, charges and penalties" for the use of water services would pass muster if, on remand, the county showed that the fees were no more than "'roughly proportional' to the additional costs" the county would incur "in providing the facilities needed to ensure the availability of adequate water and sewer services for plaintiffs' developments." *Id.* at 4, 43. That court, too, did not suggest that a property-specific analysis would be required.

b. Most of the other cases petitioner cites involved conditions imposed through individualized adjudicative proceedings, not formula-based fees imposed on different categories of development. They thus shed no light on how to apply *Dolan* to the fee schedule the County used. *See Keppel v. City of Sparks*, 570 P.3d 592, at *2 (Nev. 2025) (unpublished table disposition) (upholding permit condition requiring plaintiffs to grant easement to maintain drainage pipe needed to prevent flooding); *B.A.M. Dev., L.L.C. v. Salt Lake County*, 2012 UT 26 ¶40 (upholding required dedication of 13-foot strip of land to widen a county road); *Goss v. City of Little Rock*, 151 F.3d 861, 863 (8th Cir. 1998) (city failed to show that dedication of 22 percent of landowner's property was roughly proportional to traffic impacts that could "'conceivably' be generated at some unknown point in the future if a strip mall were erected on [the] land" where there were no plans to build such a strip mall).

c. Only two of the cases petitioner cites—both involving the same unusual tree-removal ordinance enacted by a Michigan township—arguably struck down a formula-based in-lieu fee because it did not adequately account for the impacts of specific property owners. *See F.P. Dev., LLC v. Charter Twp. of Canton*, 16 F.4th 198, 206-208 (6th Cir. 2021); *Charter Twp. of Canton v. 44650, Inc.*, 346 Mich. App. 290, 319-328 (2023).

But those cases turned largely on the township's failure to supply evidence and did not announce any broad-based rule. In the Sixth Circuit case, for example, the township provided "little information about its [tree] replacement or relocation requirements," seeming "to assume that its mitigation requirements [were] appropriate." *F.P. Dev.*, 16 F.4th at 206. Likewise, the township's information on in-lieu-of fees was "based on tree replacement costs calculated fifteen years ago." *Ibid.* Moreover, far from holding that a parcel-specific inquiry is required in every case, the Sixth Circuit suggested that the township could have "satisfie[d] the nexus and rough proportionality test" if it had "introduc[ed] some evidence relating to the 'methodology and functioning'" of its formula at a general level. *Id.* at 207-208 (citing *Beavercreek*, 89 Ohio St. 3d at 129-131).

The Michigan case, meanwhile, mostly followed the Sixth Circuit and likewise emphasized the township's lack of evidence. *See 44650, Inc.*, 346 Mich. App. at 327-328 (observing that the township "provided no evidence that defendant's tree removal caused any environmental degradation" either generally or with respect to neighboring parcels).

Accordingly, the petition cites no case holding that *Dolan* requires, as a matter of law, parcel-specific analysis when governments impose formula-based fees on categories of new development.

C. Even If There Were A Conflict, Review Would Be Premature

Even if petitioner had identified a conflict on the questions presented, it would be premature for this Court to step in now by granting review again in this case post-remand. Instead, this Court should allow additional time for the issues to percolate in the lower courts.

The need for percolation is readily apparent. It was only two years ago that this Court clarified a critical threshold issue in *Sheetz*. Before that decision, it was unclear whether *Dolan* had any application to the sort of class-based fee imposed here. The lower courts need time to react to *Sheetz* and to develop thoughtful answers to the tailoring question the Court expressly left open.

Indeed, it is telling that of all the cases petitioner cites in support of his conflict argument, only two post-date *Sheetz*. The rest were decided years before, and many are the same cases that petitioner relied on in seeking a parcel-specific *Dolan* rule during his first trip to this Court. Particularly where petitioner emphasizes the extent to which *Sheetz* impacted the law in this area, *see* Pet. 5, lower courts need further time to assess that impact.

The need for percolation is all the more important on an issue implicating state land-use law. The Court has recognized that state courts regularly confront land-use questions implicating constitutional protections. *See Dolan*, 512 U.S. at 389. For that reason, *Dolan* drew on their experience in developing the rough-proportionality test. *See id.* at 389-391. So too here, the Court should allow the state courts to consider, in the first instance, "whether a permit condition imposed on a class of properties must be tailored with the same degree of specificity as a permit condition that targets a particular development." *Sheetz*, 601 U.S. at 280.

If a clear conflict develops on that question, the Court could address it at that time with the benefit of a robust body of lower-court decisions. In the meantime, it should deny this petition.

IV. THIS CASE IS A POOR VEHICLE FOR MULTIPLE REASONS

Independently, review should be denied because this case is a poor vehicle for addressing any legal question.

A. As an initial matter, this Court's review of the questions presented would be complicated by the need to first answer the threshold question raised in Justice Sotomayor's concurrence: "whether the permit condition would be a compensable taking if imposed outside the permitting context." *Sheetz*, 601 U.S. at 280-281. If the Court answered that question in the negative, it would never reach either of the two questions presented.

B. Further, the California Supreme Court exercised its constitutional and statutory authority to depublish the Court of Appeal's decision. *See* Cal. Const., art. VI, § 14; Cal. Gov't Code § 68902; Cal. R. Ct. 8.1125(c)(2). The power to depublish allows the California Supreme Court to oversee "the evolution and scope of th[e] state's decisional law." *Schmier v. Superior Ct.*, 78 Cal. App. 4th 703, 710 (2000). It did so here by effectively erasing the decision from the books "as if [it] had not been written." *Farmers Ins. Exch. v. Superior Ct.*, 218 Cal. App. 4th 96, 110 (2013).

Contrary to petitioner's suggestion (Pet. 4), the California Supreme Court did not explain its reasons for ordering depublication. While "[t]here are no fixed criteria for depublication," it "most often occurs because a majority of the justices believe the opinion is wrong on a significant point." Jon B. Eisenberg, *Civil Appeals & Writs* ¶ 11:180.1 (Laurie J. Hepler ed., 2025 update). But depublication may also occur when, among other reasons, "(i) the supreme court believes the opinion's analysis was too broad and could lead to unanticipated misuse as precedent; [or] (ii) the court wants future courts to be able to 'write on a clean slate[.]'" *Ibid.* The "clean slate" possibility is particularly salient here—absent depublication, the

Court of Appeal's framework would bind all trial courts throughout California, *see Cuccia v. Superior Ct.*, 153 Cal. App. 4th 347, 353 (2007), potentially hindering further development in the law.

Regardless of the reason for depublication, depublished decisions are "not citable" and have no "binding or precedential effect." Cal. R. Ct. 8.1115(e)(3). Indeed, attorneys could be sanctioned for citing the decision in court filings. *See, e.g.*, *Alicia T. v. County of Los Angeles*, 222 Cal. App. 3d 869, 884-886 (1990).

The depublished decision, therefore, will have no effect on California law.[3] Nor will it have any effect in other jurisdictions, as other courts respect California's rules. *See, e.g.*, *Coal. for Fairness in SoHo & NoHo, Inc. v. City of New York*, No. 112, 2026 WL 88133, at *7 n.5 (N.Y. Jan. 13, 2026) (collecting cases). Contrary to petitioner's assertion, errant citations to depublished decisions in dissenting opinions do not suggest that such decisions "threaten[] to spread," or that this attenuated possibility is a reason for this Court's review. Pet. 4 & n.4.

Petitioner cites two cases—*Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639 (2022), and *Lange v. California*, 594 U.S. 295 (2021)—in which this Court has reviewed unpublished decisions from the

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[3] Petitioner notes that one California court cited the Court of Appeal's decision (Pet. 34), but that was before the decision was depublished. C*ompare Diego v. City of San Diego*, No. D084333, 2025 WL 2887089, at *8 n.12 (Cal. Ct. App. Oct. 10, 2025), *with* Pet. App. 150a (depublication order dated November 12, 2025).

California Court of Appeal. Pet. 33-34. But *unpublished* decisions are different from *depublished* ones.

The California Court of Appeal will often decline to publish a decision that simply follows well-established law. *See* Cal. R. Ct. 8.1105(c). That was true in *Viking River Cruises*, where the Court of Appeal's ruling "was dictated" by a decision of the California Supreme Court. 596 U.S. at 648. This Court's review in that case, therefore, was effectively a review of the underlying high court decision. In *Lange*, meanwhile, the California Supreme Court let the Court of Appeal's decision stand by denying review, 594 U.S. at 300, and no party disputed that the decision implicated a question that had divided the federal courts of appeals and state courts of last resort, *see* Br. in Opp'n at 4, *Lange* (No. 20-18), 2020 WL 5549441.

Here, by contrast, the Court of Appeal's decision was the first in California to apply *Dolan* to a formula-based fee imposed on a class of development. And while a decision to depublish is technically "not an expression of the [California Supreme Court's] opinion of the correctness of the result of the decision or of any law stated in the opinion," Cal. R. Ct. 8.1125(d), the practical result is that the opinion has "ceased to exist," *Farmers Ins. Exch.*, 218 Cal. App. 4th at 111—hardly an *endorsement* from the state's high court on an issue of first impression. And as discussed, there is no division among the federal courts of appeals or state high courts.

Petitioner has not cited any case, and the County has found none, in which this Court granted review of a decision *depublished* by the California Supreme Court. This case should not be the first.

C. Additionally, the Court of Appeal deemed Question Two forfeited under California law because it was raised for the first time on remand from this Court. Pet. App. 59a-60a (citing cases). The invocation of forfeiture raises the question whether this Court lacks jurisdiction to review Question Two because the Court of Appeal based its decision, in the alternative, on an independent and adequate state-law ground.

This Court lacks jurisdiction to review an issue of federal law on direct review from a state-court judgment if that judgment rests on independent and adequate state-law grounds. *See* Stephen M. Shapiro et al., *Supreme Court Practice* § 3.22 (11th ed. 2019). That jurisdictional bar applies "to state decisions forfeiting federal claims for violation of state procedural rules," *Harris v. Reed*, 489 U.S. 255, 261 (1989) (quotation marks omitted), including "discretionary" procedural rules, *Beard v. Kindler*, 558 U.S. 53, 60 (2009).

Accordingly, to address Question Two, this Court would first have to decide whether the forfeiture rule applied here is "firmly established" and "regularly followed" in California. *Beard*, 558 U.S. at 60 (quotation marks omitted). That threshold issue would further complicate, and potentially frustrate, this Court's review of questions that, in any event, are unworthy of the Court's consideration.

CONCLUSION

The petition should be denied.

Respectfully submitted,

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