

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 California Court Of Appeal,
Third Appellate District

**REPLY IN SUPPORT OF
PETITION FOR WRIT OF CERTIORARI**

DEBORAH J. LA FETRA
DAVID J. DEERSON
Pacific Legal Foundation
3100 Clarendon Blvd.,
Suite 1000
Arlington, VA 22201

PAUL J. BEARD II
Pierson Ferdinand LLP
453 S. Spring St.
Suite 400-1458
Los Angeles, CA 90013

BRIAN T. HODGES
Counsel of Record
Pacific Legal Foundation
555 Capitol Mall
Suite 1290
Sacramento, CA 95814
Telephone: (916) 419-7111
BHodges@pacificlegal.org

Counsel for Petitioner

TABLE OF CONTENTS

Introduction	1
Argument	2
I. The Lower Court’s Decision Is in Tension with Opinions of this Court	2
II. State and Federal Courts Conflict on the Questions Presented	5
III. The Decision Below Permitted a Reallocation of Impact Mitigation Burdens	7
IV. The Issues Need No Further Percolation.....	9
V. This Case Presents a Clean Vehicle for Review	10
Conclusion.....	12

TABLE OF AUTHORITIES

	Page(s)
Cases:	
<i>Bd. of Cnty. Comm’rs, Santa Rosa Cnty. v. Home Builders Ass’n of W. Fla.,</i> 325 So. 3d 981 (Fla. Dist. Ct. App. 2021)	6
<i>Chevron USA Inc. v. Plaquemines Par.,</i> 146 S. Ct. 1052 (2026)	4
<i>Cox Broad. Corp. v. Cohn,</i> 420 U.S. 469 (1975)	9
<i>Cynthia D. v. Superior Ct.,</i> 5 Cal. 4th 242 (1993)	12
<i>Dir., Off. of Workers’ Comp. Programs, Dep’t of Lab. v. Greenwich Collieries,</i> 512 U.S. 267 (1994)	3
<i>Dolan v. City of Tigard,</i> 512 U.S. 374 (1994)	1-5, 7
<i>Ehrlich v. Culver City,</i> 12 Cal. 4th 854 (1996)	3
<i>Fisher v. Univ. of Tex. at Austin,</i> 570 U.S. 297 (2013)	9
<i>Fisher v. Univ. of Tex. at Austin,</i> 579 U.S. 365 (2016)	9
<i>Grupe v. Cal. Coastal Comm’n,</i> 166 Cal. App. 3d 148 (1985)	3
<i>Harris v. Quinn,</i> 573 U.S. 616 (2014)	10
<i>Home Builders Ass’n of Tulare/Kings Cntys., Inc. v. City of Lemoore,</i> 185 Cal. App. 4th 554 (2010).....	3

<i>Horne v. Dep't of Agric.</i> , 569 U.S. 513 (2013)	9
<i>Horne v. Dep't of Agric.</i> , 576 U.S. 350 (2015)	9
<i>Janus v. AFSCME Council 31</i> , 585 U.S. 878 (2018)	10
<i>Knick v. Twp. of Scott</i> , 588 U.S. 180 (2019)	9
<i>Knox v. SEIU, Loc. 1000</i> , 567 U.S. 298 (2012)	10
<i>Koontz v. St. Johns River Mgmt. Dist.</i> , 570 U.S. 595 (2013)	5
<i>Marbury v. Madison</i> , 5 U.S. (1 Cranch) 137 (1803)	11
<i>Nollan v. Cal. Coastal Comm'n</i> , 483 U.S. 825 (1987)	4-5
<i>Olympia v. Drebeck</i> , 156 Wash.2d 289 (2005)	6-7
<i>Pakdel v. City and Cnty. of San Francisco</i> , 594 U.S. 474 (2021)	9
<i>People v. Williams</i> , 17 Cal. 4th 148 (1998)	8-9
<i>Sackett v. EPA</i> , 566 U.S. 120 (2012)	9
<i>Sackett v. EPA</i> , 598 U.S. 651 (2023)	9
<i>Sheetz v. Cnty. of El Dorado</i> , 601 U.S. 267 (2024)	1, 3, 5-10
<i>Shinn v. Ramirez</i> , 596 U.S. 366 (2022)	9

<i>Students for Fair Admissions, Inc. v. President and Fellows of Harvard College</i> , 600 U.S. 181 (2023)	7
<i>United States v. Texas</i> , 143 S. Ct. 51 (2022)	2
<i>Volusia Cnty. v. Aberdeen at Ormond Beach</i> , 760 So. 2d 126 (Fla. 2000)	5-6
Miscellaneous:	
Barnett, Stephen R., <i>Depublication Deflating: The California Supreme Court’s Wonderful Law-Making Machine Begins to Self-Destruct</i> , 45 Hastings L.J. 519 (1994)	11-12
Br. of Am. Plan. Ass’n Amicus Curiae in Supp. of Neither Party, <i>Sheetz v. Cnty. of El Dorado</i> , No. 22-1074 (filed Nov. 20, 2023).....	1
Br. for Resp’t, <i>Sheetz v. Cnty. of El Dorado</i> , No. 22-1074 (filed Dec. 13, 2023)	1
Katz, Steven B., <i>California’s Curious Practice of “Pocket Review,”</i> 3 J. App. Prac. & Process 385 (2001)	10
Klemm, Andrew, <i>A Trap for Local Governments: Legislative Exactions After Sheetz v. County of El Dorado</i> , 75 Case W. Rsrv. L. Rev. 799 (2025).....	1
Morosoff, Nicholas V., <i>“Take’ My Beach, Please!”: Nollan v. California Coastal Commission and a Rational-Nexus Constitutional Analysis of Development Exactions</i> , 69 B.U. L. Rev. 823 (1989)	5

Nielson, Aaron L. and Stancil, Paul, <i>Gaming Certiorari</i> , 170 U. Pa. L. Rev. 1129 (2022).....	10-11
Rand Center on Housing and Homelessness, <i>The High Cost of Producing Multifamily Housing in California</i> (2025)	12
Sopko, Adam B., <i>Invisible Adjudication in State Supreme Courts</i> , 102 N.C. L. Rev. 1449 (2024)	11

INTRODUCTION

El Dorado County's opposition fails to negate the importance of the questions presented or the advisability of this Court's review. Indeed, it previously asked the Court to determine the same issue presented here: the extent to which the rough proportionality test "applies to impact fees charged to property developers based on a legislatively determined schedule or formula." Br. for Resp't, *Sheetz v. Cnty. of El Dorado*, No. 22-1074, at i, 43-47 (filed Dec. 13, 2023). The County urged that, if the Court held legislative exactions subject to *Nollan/Dolan*, then the tailoring question would present a matter of urgent nationwide importance. *Id.* at 43; *see also* Br. of Am. Plan. Ass'n Amicus Curiae in Supp. of Neither Party, *Sheetz v. Cnty. of El Dorado*, No. 22-1074, at 22-24 (filed Nov. 20, 2023) (arguing that developers and regulators will need better guidance as to the meaning of "rough proportionality" if legislative exactions are subject to *Dolan*); Andrew Klemm, *A Trap for Local Governments: Legislative Exactions After Sheetz v. County of El Dorado*, 75 Case W. Rsrv. L. Rev. 795, 799 (2025) (identifying unsettled questions including "What evidence must a government agency provide to satisfy the 'essential nexus' and 'rough proportionality' prongs of the test? Must 'a permit condition imposed on a class of properties . . . be tailored with the same degree of specificity as a permit condition that targets a particular development?") (quoting *Sheetz v. Cnty. of El Dorado*, 601 U.S. 267, 269 (2024)). The Court declined to address these questions until the state courts had an opportunity to consider them on remand. *Sheetz*, 601 U.S. at 280.

The tailoring issues are now clearly presented before this Court in a posture appropriate for resolution. The California court ruled that the traffic impact fee is an exaction and must satisfy the “rough proportionality” test established by *Dolan v. City of Tigard*, 512 U.S. 374 (1994). Pet.App. 22a. But the court *again* ruled that class-based legislative exactions must be evaluated under the Mitigation Fee Act’s (MFA) “reasonable relationship” test. Pet.App. 53a-55a.

The County acknowledges that “the Court of Appeal addressed the question expressly left open in *Sheetz*[,]” BIO 14. The decision meets the standard for granting certiorari. *See United States v. Texas*, 143 S. Ct. 51 (2022) (mem.) (granting certiorari to review open questions generated by a previously decided case).

The Court should grant the petition.

ARGUMENT

I. The Lower Court’s Decision Is in Tension with Opinions of this Court

The California court concluded that *Dolan* intended the phrase “rough proportionality” to serve as a “moniker” for the “reasonable relationship” test. Pet.App. 41a-42a. From that, the court ruled that the MFA’s “reasonable relationship” standard encompassed the rough proportionality test. Pet.App. 50a, 53a-55a.

The fact that *Dolan* specifically declined to adopt the “reasonable relationship” formulation means that the two tests are not synonymous. Rough proportionality requires the government to make “some sort of individualized determination that the required

[exaction] is related both in nature and extent to the impact of the proposed development.” Pet.App. 42a (quoting *Dolan* 512 U.S. at 391) (emphasis omitted). In contrast, the “reasonable relationship” test requires only evidence the government engaged in a “valid method” for determining the “overall impact the specific type of development has on the government’s land-use interest” (Pet.App. 47a, 49a)—a standard that requires the government to show “only an indirect relationship between a proposed exaction and a need to which the development contributes.” *Grupe v. Cal. Coastal Comm’n*, 166 Cal. App. 3d 148, 164-66 (1985). Nonetheless, the court below was bound to hold the impact fee subject to the state’s “reasonable relationship” test under *Ehrlich v. Culver City*, 12 Cal. 4th 854 (1996). Pet.App. 50a. The California Supreme Court’s refusal to revisit the holding of that case in light of *Sheetz* means that *Ehrlich* will control every subsequent case in the state until this Court agrees to resolve the federal questions.

The burden of proof, too, is not the same. This Court distinguishes between the burden of production, defined as “the burden of going forward with the evidence” and the burden of proof, defined as “the burden of persuasion.” *Dir., Off. of Workers’ Comp. Programs, Dep’t of Lab. v. Greenwich Collieries*, 512 U.S. 267, 274 (1994). Under California law, the government bears only an initial burden of *production* (Pet.App. 54a), which “is not equivalent to the burden of proof.” *Home Builders Ass’n of Tulare/Kings Cnty., Inc. v. City of Lemoore*, 185 Cal. App. 4th 554, 562 (2010). The “plaintiff has the burden of proof with respect to all facts essential to its claim for relief and that burden remains.” *Ibid.* (the plaintiff also bears the burden of persuasion). The court below effectively

shifts the burden of persuasion to property owners by accepting the government's legislative process in lieu of evidence demonstrating the need for mitigation and rough proportionality to the extent that need is created by the proposed development. The court's standard is "so broad that it is meaningless." *Chevron USA Inc. v. Plaquemines Par.*, 146 S. Ct. 1052, 1060 1061 & n.3 (2026) (The term "relating to" in a federal removal statute requires a causal "connection that is not 'tenuous, remote, or peripheral.'" (citations omitted). The County's decision to reallocate the cost of mitigating commercial traffic impacts is based on precisely the type of indirect relationship and tenuous evidence that the California rule allows, but *Dolan* forbids.

There is no basis to hold the two tests equivalent. *Dolan* states only that the typical iteration of the 'reasonable relationship' was "*closer* to the federal constitutional norm" where it requires "the municipality to show" the relationship between the dedication and the impact of the proposed development on an individualized basis. 512 U.S. at 390-91 (emphasis added). Yet the Court still declined to adopt it, concluding that "rough proportionality" refined the inquiry to "best encapsulate[] what we hold to be the requirement of the Fifth Amendment." *Id.* at 391.

This Court has *always* identified California's "reasonable relationship" standard as an outlier. In *Nollan v. California Coastal Commission*, the Court emphasized that the "essential nexus" test "is consistent with the approach taken by every other court that has considered the question, *with the exception of the California state courts.*" 483 U.S. 825, 839 (1987) (emphasis added). *See also Dolan*, 590 U.S.

at 390-91 (California was among jurisdictions that adopted deferential review) (citing Nicholas V. Morosoff, “‘Take’ My Beach, Please!”: *Nollan v. California Coastal Commission and a Rational-Nexus Constitutional Analysis of Development Exactions*, 69 B.U. L. Rev. 823, 866-67 (1989) (California’s test was among “[a] small minority of courts [that] have applied a variation of the judicial-deference test.”). And *Koontz v. St. Johns River Management District* notably omits California when observing that “[n]umerous courts . . . have confronted constitutional challenges to monetary exactions over the last two decades and applied the standard from *Nollan* and *Dolan* or something like it.” 570 U.S. 595, 618 (2013) (citing Ohio, Illinois, and Texas cases). Thus, to the extent the typical version of the “reasonable relationship” test is “closer” to the proportionality requirement (*Dolan*, 512 U.S. at 391), California’s test remains a constitutionally improper outlier.

II. State and Federal Courts Conflict on the Questions Presented

The County asserts that there are no lower court conflicts by redefining the questions and seeking to distinguish the cases cited in the petition on factual grounds. BIO 28-30. Even then, the County concedes that the Michigan and Sixth Circuit cases conflict with the decision below. BIO 33-34.

Conflicts abound because some courts applied *Nollan/Dolan* scrutiny (or a close facsimile) to legislative impact fees even before *Sheetz*. See Pet. 19-33. Florida, for example, applied a dual-rational-nexus standard to such fees, requiring consideration of a development’s individual factors. See *Volusia Cnty. v. Aberdeen at Ormond Beach*, 760 So. 2d 126,

136 (Fla. 2000) (public school impact fees unconstitutional as applied to an age-restricted development that disallowed children because it “neither contributes to the need for additional schools nor benefits from their construction”); *Bd. of Cnty. Comm’rs, Santa Rosa Cnty. v. Home Builders Ass’n of W. Fla.*, 325 So. 3d 981, 985 (Fla. Dist. Ct. App. 2021) (per curiam) (affirming injunction where fees “did not account for the differences between the northern and southern parts of the county” despite school district’s evidence “about how the maximum allowable impact fees were calculated, where the numbers came from, and the amount of fees ultimately imposed”).

By contrast, in *Olympia v. Drebeck*, 156 Wash.2d 289, 302-04 (2005), the Washington Supreme Court held that because legislatively imposed fees are exempt from *Nollan/Dolan* scrutiny, they do not require “individualized assessments” of a particular development’s impact on public facilities. Under the relevant statute, the court held that localities can satisfy the “reasonably related” requirement without conducting individualized fee calculations. *Id.* at 304, 307-08. Even though this decision predates *Sheetz* by twenty years, the dissent explained that the majority made the same error as the California court below:

The crux of the majority’s flaw in reasoning is its assumption, absent statutory or precedential support, that any impact fee ordinance that meets the procedural requirements contained in RCW 82.02.060 *per se* produces a statutory impact fee tailored to the requirements of proportionality and reasonable causation by, and reasonable benefit to, the specific development project at issue.

Id. at 316 (Sanders, J., dissenting).

III. The Decision Below Permits a Reallocation of Impact Mitigation Burdens

Sheetz’s second question asks this Court to determine how *Dolan* tailoring works when impact fees are imposed on a class basis rather than on an individual basis; specifically, whether the government may force one class of development to pay for the impacts of another class of development. The question does not call for mere error correction; it seeks a *rule*.

This Court established just such a rule in *Students for Fair Admissions, Inc. v. President and Fellows of Harvard College*, 600 U.S. 181 (2023) (*SFFA*). It first considered Harvard’s asserted interests in using racial preferences in admissions, *id.* at 214, then established the rule that the goals of “training future leaders,” preparing students for “an increasingly pluralistic society,” and promoting “knowledge stemming from diverse outlooks” are “commendable” but “not sufficiently coherent” to uphold a race-based policy. *Ibid.* Moreover, the “admissions programs fail to articulate a meaningful *connection* between the means they employ and the goals they pursue.” *Id.* at 215 (emphasis added). This means-end rule echoes *Dolan*’s rough proportionality inquiry. In *SFFA*, the Court applied the rule to the facts, *id.* at 222, concluding that the “obvious” effects of racial preferences “operate[d] like clockwork.” *Id.* at 222 & n.7. As such, the Court concluded that the racial preferences violated the Equal Protection Clause. *Id.* at 230.

The Court can do the same here. On remand from *Sheetz*, the County chose not to augment the existing

factual record (Pet.App. 176a); *see also Sheetz*, 601 U.S. at 271-72. Thus, it remains undisputed that, in setting the traffic impact fee for new residential development, the County reallocated hundreds of millions of dollars in commercial impact mitigation costs onto new residential development. Pet.App. 62a-63a n.14, 187a (stating that a significant “portion of the costs previously allocated to non-residential have been reallocated to residential uses”). The County justified that reallocation based solely on an economic survey concluding that population growth is one of several reasons why a new business may choose to locate in the county. AR 2089-91. This was a policy decision: Fearful of deterring commercial development, the County determined that new residential development must mitigate most of the traffic generated by new commercial development. Pet.App. 185a-188a.

The County cannot sweep that inconvenient truth under the rug. Despite the appellate court’s erroneous conclusion that arguments relating to the reallocation of commercial mitigation costs were forfeited,¹ the court decided the merits question of whether the County’s decision to condition all new residential development permits on mitigation of impacts of commercial development violated the Fifth Amendment’s rough proportionality requirement. Pet.App. 60a-67a; *see also People v. Williams*, 17 Cal. 4th 148,

¹ The trial court record confirms that Sheetz timely argued that the fee schedule burdened residential development to the advantage of commercial development by shifting commercial mitigation costs to residential development. 2 AA 317-18, 419. The appellate court did not address Sheetz’s objection to the forfeiture determination, which he preserved for further review and can be resolved on remand if necessary. Pet. 34-35.

161 n.6 (1998) (appellate courts have the authority to determine forfeited issues). Once a lower court issues a substantive ruling, forfeited or not, it becomes subject to Supreme Court review. *Cox Broad. Corp. v. Cohn*, 420 U.S. 469, 476 (1975); *Shinn v. Ramirez*, 596 U.S. 366, 375 n.1 (2022) (The Supreme Court “ha[s] discretion to forgive any forfeiture.”). There is no barrier to review.

IV. The Issues Need No Further Percolation

The County urges this Court to delay resolving the issues presented because they should first be considered by state courts and because *Sheetz* was decided only two years ago. BIO 34-35.

First, *Knick v. Township of Scott* refutes the notion that state courts deserve first crack at deciding how to apply federal constitutional rights to property owners. 588 U.S. 180, 191 (2019).

Second, this Court grants follow-up cases when further explication is necessary to define the contours of constitutional rights.² *Knick* was followed by *Pakdel v. City and County of San Francisco*, 594 U.S. 474, 477-78 (2021), to emphasize *Knick*’s protection for property owners who obtain a final decision underlying a takings claim. The Court’s holding that an owner may assert a takings claim as a defense to an enforcement action in *Horne v. Department of Agriculture*, 569 U.S. 513 (2013), was followed by its decision on the merits of that claim in *Horne v. Department of Agriculture*, 576 U.S. 350, 351 (2015).

² It is not unusual for the Court to follow up in the same case. *Sackett v. EPA*, 566 U.S. 120 (2012); *Sackett v. EPA*, 598 U.S. 651 (2023); *Fisher v. Univ. of Tex. at Austin*, 570 U.S. 297 (2013); *Fisher v. Univ. of Tex. at Austin*, 579 U.S. 365 (2016).

And the Court's holding that mandatory agency shop fees violate the First Amendment in *Janus v. AFSCME Council 31*, 585 U.S. 878 (2018), similarly followed earlier cases leading to that ultimate holding. *Knox v. SEIU, Loc. 1000*, 567 U.S. 298 (2012); *Harris v. Quinn*, 573 U.S. 616 (2014).

There is no need for further development of the law on the issues presented.

V. This Case Presents a Clean Vehicle for Review

No threshold or jurisdictional questions would frustrate this Court's ability to determine the constitutionality of the exaction.

Justice Sotomayor's observation that California courts had not yet addressed whether the impact fee is an exaction when the Court decided *Sheetz* is no barrier to review here. *Sheetz*, 601 U.S. at 281 (Sotomayor, J., concurring). The court of appeal addressed that question on remand and concluded that the fee is an exaction. Pet.App. 22a. The County did not seek review of that determination in the California Supreme Court or this Court.

The California Supreme Court's depublication of the decision below—which the panel determined met all the qualifications for publication—heightens the need for this Court's review. See Steven B. Katz, *California's Curious Practice of "Pocket Review,"* 3 J. App. Prac. & Process 385, 385, 387-89 (2001) ("depublishing" orders amount to review without reasoning, contrary to the most basic principles of the common law tradition" and citing state court justices acknowledging that depublishing serves a doctrinal function); Aaron L. Nielson and Paul Stancil, *Gaming*

Certiorari, 170 U. Pa. L. Rev. 1129, 1190-94 (2022) (Lowers courts' attempts to insulate their decisions from Supreme Court review undermines this Court's supremacy to declare "what the law is"³ and imposes significant costs on litigants, third parties, and the judiciary itself.).

The California Supreme Court's choice to depublish in the absence of any party's request means that a majority of the court "believe[s] the opinion is 'wrong in some significant way, such that it would mislead the bench and bar if it remained citable as precedent.' In other words, it's a merits issue." Adam B. Sopko, *Invisible Adjudication in State Supreme Courts*, 102 N.C. L. Rev. 1449, 1475 (2024) (quoting former Justice Joseph R. Grodin) (citation omitted). The California Supreme Court apparently recognized something wrong in the lower court's decision but doesn't disclose the nature of the error. Given the court's refusal to review the case itself, Pet.App. 150a, only this Court can answer the important questions presented.

Depublished opinions, moreover, are not as quarantined as the County would have this Court believe. Both the California Supreme Court and the courts of appeal often ignore the rule against citing depublished opinions as precedent. See Stephen R. Barnett, *Depublication Deflating: The California Supreme Court's Wonderful Law-Making Machine Begins to Self-Destruct*, 45 Hastings L.J. 519, 548-65 (1994) (collecting cases). In the absence of contrary precedent, a depublished opinion may be the only on-point reference available and courts are free "to replicate both the result and the reasoning of a depublished opinion, as long as they do so without

³ *Marbury v. Madison*, 5 U.S. (1 Cranch) 137, 177 (1803).

‘citing’ or ‘relying on’ that opinion.” *Id.* at 567; *see also Cynthia D. v. Superior Ct.*, 5 Cal. 4th 242, 254 n.9 (1993) (citing a depublished opinion from which the Court adapted its analysis).

The County’s technical and methodological details miss the forest for the trees. To the extent the County urges deference to its experts, the legislative process, dominated by fee-for-hire consultants, is just as susceptible to abuse as ad-hoc determinations. *See Nat’l Ass’n of Home Builders Amicus Br.* at 14 (citing Rand Center on Housing and Homelessness, *The High Cost of Producing Multifamily Housing in California*, at 28 (2025) (Nexus studies “often justify fees that can vary by as much as an order of magnitude across geographically proximate, observably similar communities.”). Property owners must have recourse to a non-deferential judiciary to protect their constitutional rights.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

DEBORAH J. LA FETRA
DAVID J. DEERSON
Pacific Legal Foundation
3100 Clarendon Blvd.,
Suite 1000
Arlington, VA 22201

PAUL J. BEARD II
Pierson Ferdinand LLP
453 S. Spring St.
Suite 400-1458
Los Angeles, CA 90013

BRIAN T. HODGES
Counsel of Record
Pacific Legal Foundation
555 Capitol Mall
Suite 1290
Sacramento, CA
95814
Telephone: (916) 419-7111
BHodges@pacificlegal.org

Counsel for Petitioner

MAY 2026