No. ______

In the Supreme Court of the United States

JOHNNY LEE ZAMRZLA, JEANETTE ZAMRZLA, AND SHERI LYNN ZAMRZLA-GRECO,

Petitioners,

v.

ANTELOPE VALLEY WATERMASTER, et al.,

Respondents.

On Petition for a Writ of Certiorari to the California Court of Appeal, Second Appellate District, Division One

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

In *Phillips Petroleum Co. v. Shutts*, this Court addressed the minimum due process that is owed to absent members of a plaintiff class who stood to lose through the class action the right to sue for modest money damages but expressly left open what due process requires when absent class members face more serious property deprivations or liability. The Court did not address the issue because such facts were not before it. This case has those facts.

The first question presented is:

What minimum due process protections are required before absent class members may be bound by a class judgment that substantially impairs their real-property rights and exposes them to monetary liability, rather than merely extinguishing claims for money damages?

A related yet unsettled question on which the circuits and states are split is:

Does due process require that class members be afforded the right to opt out of the class action where the action does not predominantly concern monetary claims but nonetheless adjudicates monetary claims against class members who are subject to the forum court's personal jurisdiction?

PARTIES TO THE PROCEEDING

Petitioners were appellants in the California Court of Appeal proceedings below and are: Johnny Lee Zamrzla, Jeanette Zamrzla, and Sheri Lynn Zamrzla-Greco, Trustee of The Johnny and Pamella Zamrzla 1999 Family Trust–Credit Shelter Trust–Trust C, in place of Johnny and Pamella Zamrzla ("Sheri Lynn Zamrzla-Greco"). Johnny and Pamella Zamrzla had been appellants in the appellate proceeding below but passed away during the appeal. Sheri Lynn Zamrzla-Greco was substituted in place of Johnny and Pamella Zamrzla. However, since the facts underlying the appeal predated the deaths of Johnny and Pamella Zamrzla, the convention adopted in the appellate proceedings has been to refer to Johnny and Pamella Zamrzla as existing parties, which is adopted in this petition.

Respondents were respondents in the California Court of Appeal proceedings below and are: Antelope Valley Watermaster, City of Los Angeles, Los Angeles World Airports, Antelope Valley United Mutuals Group (whose members are: Antelope Park Mutual Water Company, Aqua-J Mutual Water Company, Averydale Mutual Water Company, Baxter Mutual Water Company, Bleich Flat Mutual Water Company, Colorado Mutual Water Company, El Dorado Mutual Water Company, Evergreen Mutual Water Company, Landale Mutual Water Company, Shadow Acres Mutual Water Company, Sundale Mutual Water Company, Sunnyside Farms Mutual Water Company, Inc., Tierra Bonita Mutual Water Company, West Side Park Mutual Water Company, and White Fence Farms Mutual Water Company), Adams-Bennett Investments, LLC, Saint Andrew's Abbey, Inc., Robertson's Ready Mix, Ltd., SCI

California Funeral Services, Inc. (dba Joshua Memorial Park), U.S. Borax, Inc., Los Angeles County Sanitation District No. 14, Los Angeles County Waterworks District No. 20, Los Angeles County Waterworks District No. 40, and Palmdale Water District.

Although the following entities—Grimmway Enterprises, Inc., Palm Ranch Irrigation District, Littlerock Creek Irrigation District, and Service Rock Products L.P.—are identified as parties to the appellate proceedings below on the websites maintained for the California Supreme Court and the California Court of Appeal, or (in the case of Service Rock Products L.P.) were served with papers in the appellate proceedings, they were not identified as parties in the California Court of Appeal's written opinion challenged by this petition, nor did any of them file or join in any brief in the appellate proceedings. Accordingly, pursuant to this Court's Rule 12.6, petitioners believe these entities have no interest in the outcome of this petition but will be served with a digital copy of this petition.

RELATED PROCEEDINGS

This case is directly related to the following:

Antelope Valley Watermaster et al. v. Johnny Zamrzla et al., Court of Appeal of the State of California, Second Appellate District, Division One, Case No. B331148, (Dec. 15, 2025, opinion affirming trial court order of June 9, 2023), *reh'g denied* (Jan. 13, 2026), *review denied* (Mar. 18, 2026);

Antelope Valley Groundwater Cases, Superior Court of the State of California, County of Los Angeles, Lead Case No. BC325201, Judicial Council (of California) Coordination Proceeding ("JCCP") No. 4408 (June 9, 2023, order denying petitioners' motions to set aside or modify judgment; Dec. 23, 2015, judgment); and

Wood v. Los Angeles County Waterworks District No 40 et al., Superior Court of the State of California, County of Los Angeles, Case No. BC391869, JCCP No. 4408 (Dec. 23, 2015, judgment).

There are no other proceedings in state or federal trial or appellate courts, or in this Court, directly related to this case within the meaning of this Court's Rule 14.1(b)(iii).[1]

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[1] The following three opinions from the California Court of Appeal concerned appeals from the coordinated case from which the class action at issue here was a part, but none directly arose from the class action: *Antelope Valley Groundwater Cases*, 277 Cal. Rptr. 3d 419 (Cal. Ct. App. 2021); *Antelope Valley Groundwater Cases*, 277 Cal. Rptr. 3d 333 (Cal. Ct. App. 2021); *Antelope Valley Groundwater Cases*, 272 Cal. Rptr. 3d 517 (Cal. Ct. App. 2020).

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INTRODUCTION

This Court's seminal opinion in *Phillips Petroleum Co. v. Shutts*, 472 U.S. 797 (1985), spoke to what due process requires to adjudicate the claims of absent plaintiff class members who stood to lose through the class action the right to sue for minimal money damages, but it expressly left open what due process requires to adjudicate the claims of absent class members exposed to more serious property loss. The Court has not since provided direction and the constitutional requirements are uncertain. This case is well positioned to provide guidance and also resolve uncertainty among the courts concerning intertwined issues of when the right to opt out of a class action is required by due process.

Petitioners are a family of four individuals who are long-time landowners in a geographic area of California known as the Antelope Valley. They have historically used their land for farming. As landowners, petitioners have the property right to use groundwater underlying their land.

Lawsuits arose concerning competing claims to use groundwater in the valley, which were coordinated into an overarching case known as the *Antelope Valley Groundwater Cases*. The case involved, among others, public water suppliers, municipalities, and two different class actions of overlying landowners. The resulting judgment set limits on the amount of water that could be used by the parties involved.

Petitioners were involuntary class members of one of the class actions bound by this judgment. The judgment resulted in a severe reduction of their right to use the groundwater underlying their farmland on the order of nearly 99%—depriving their farmland of nearly all economic value. The judgment also purported to make petitioners liable for tens of thousands of dollars in penalties for using more water than the judgment allowed.

All of this occurred with all four petitioners not only lacking actual notice of the class action at the time, but also with no attempt ever made to provide individual notice to at least two of the petitioners.

Even if class notice had been properly distributed, however, the notices were so defective that they denied recipients the chance to opt out of the class action. Indeed, they effectively told affected class members they did *not need* to opt out. Three class notices were given. The first two notices superficially allowed class members to opt out, but they gravely misidentified the class by describing the class nearly the opposite of how the certification order defined the class. This would have led petitioners and similarly situated parties to believe they definitively *were not* class members who had to take any action to exclude themselves from the class.

The third notice followed a full settlement of the class action. It described the class consistently with the class certification order (and that would purport to make petitioners and similar parties class members). However, that notice expressly *barred* class members from opting out of the class.

In short, the notices that allowed opt outs grossly misdescribed the class, and by the time a proper notice was issued, it was too late to opt out.

Petitioners persistently argued in the California courts that the class notices violated due process in the manner of their dissemination and their content, including that the notices did not afford the ability to opt out. Despite this, the state trial court ordered petitioners bound by the judgment, the California Court of Appeal affirmed, and the California Supreme Court declined review. The result is that petitioners have been deprived of substantial real-property rights that greatly diminish the value and uses of their property. To boot, petitioners owe massive penalties for using the amount of water consistent with their historical use.

As the final arbiter of constitutional due process, this Court should grant this petition to resolve the open question from *Shutts* and define the protections required for absent class members subject to substantial property deprivations like those inflicted on petitioners.

Additionally, this case presents an opportunity for the Court to clarify two other recurring but unsettled issues applicable to a wide range of class actions. The first is whether due process requires that class members be given the right to opt out where the class action—though not primarily seeking monetary relief—still adjudicates money claims concerning absent class members. This has been uncertain following *Shutts*, was expressly unresolved by the Court's later opinion in *Wal-Mart Stores, Inc. v. Dukes*, 564 U.S. 338 (2011), and has resulted in a clear division among the circuits and state courts alike.

The second issue is whether due process requires absent class members already subject to the forum's personal jurisdiction be given the right to opt out. Lower courts disagree on this, too.

This case cleanly stages both topics for resolution: The class action, though not predominantly about money damages, adjudicated non-incidental monetary claims affecting class members by allowing penalties to be assessed against them, and all class members (as California landowners) are subject to personal jurisdiction in the state. Moreover, because the case arises from California state litigation and because California's class action procedures do not mimic the Federal Rules of Civil Procedure, the Court need not grapple with the effect of the Federal Rules, which have derailed prior efforts to address these constitutional issues. The Court should be able to solely consider what is required by due process.

OPINIONS BELOW

The California Court of Appeal opinion is unpublished but reported at 2025 WL 3633011 and reproduced at App.3-25.

The trial court order denying petitioners' motions to set aside or modify judgment is unpublished and unreported but reproduced at App.26-49.

JURISDICTION

The California Court of Appeal issued its opinion on December 15, 2025, denied rehearing on January 13, 2026, and the California Supreme Court denied review on March 18, 2026. App.1-2, 3-25, 71. The Court has jurisdiction under 28 U.S.C. § 1257(a). *See also Bacon v. State of Texas*, 163 U.S. 207, 215 (1896).

CONSTITUTIONAL PROVISIONS INVOLVED

The Due Process Clause, which provides: "nor shall any State deprive any person of life, liberty, or property, without due process of law[.]" U.S. Const. amend. XIV, § 1.

STATEMENT OF THE CASE

I. Trial Court Class Proceedings and Judgment

Petitioners are landowners in the Antelope Valley, a part of California north of greater Los Angeles. California property owners like petitioners have the right to extract and use groundwater underlying their land. *City of Barstow v. Mojave Water Agency*, 5 P.3d 853, 863, 871-72 (Cal. 2000). This is a vested property right. *United States v. State Water Res. Control Bd.*, 227 Cal. Rptr. 161, 168 (Cal. Ct. App. 1986). Petitioners, who collectively own less than 150 acres of land, have historically used their land for farming and extracted groundwater for such purposes. App.11.

In the *Antelope Valley Groundwater Cases*, the California trial court considered (and continues to consider) competing rights to use groundwater in the valley. App.7, 10. One of the groups joined in the litigation was called the "Small Pumper" class, of which petitioners were ultimately deemed to be members. The Small Pumper class emanated from a class action complaint a landowner named Richard Wood brought on behalf of a plaintiff class "to protect his right and those of other landowners in the [Antelope Valley Groundwater] Basin to pump water on their properties in the future." App.243. Of the approximately 70,000 landowners in the valley (https://bbklaw.com/resources/appellate-decisions-limiting-groundwater-pumping-i), the Small Pumper class concerned only a portion of them.

The trial court certified the Small Pumper class in 2008. App.53-54. Its certification order defined the class as all non-governmental landowners "that have been pumping less than 25 acre-feet per year on their property during any year from 1946 to the present." App.54. The Small Pumper class ultimately consisted of around 3,000 parcels of land. App.7, 67. The number of class members was smaller than the number of parcels, as a member can own multiple parcels and all individuals in the same household were treated as a single member. App.9.

The trial court approved notice to class members following class certification, and in June 2009 written notice was distributed. App.54, 242-48.

The 2009 notice ostensibly provided the chance to opt out of the class. App.246. As the California Court of Appeal acknowledged, however, the notice "misidentified the class." App.8. Instead of stating the class consisted of landowners who had pumped "*less* than 25 acre-feet [] during *any* year from 1946 to the present" (emphasis added), the notice "*excluded* from the Small Pumper class anyone who pumped 25 acre-feet *or more* in any *one year* since 1946." App.8 (citation modified); *see also* App.244-45.

The 2009 notice thus advised recipients who pumped 25 acre-feet or more in any single year since 1946 that they were not class members and did not need to take any action to exclude themselves from the class.

The description in the notice was also incompatible with the court's class certification order. Under the certification order, a landowner pumping less than 25 acre-feet in any year since 1946 was a class member, whereas under the 2009 notice that same landowner would not be in the class if in any other year they pumped more than 25 acre-feet.

The 2009 notice also did not indicate that any judgment could expose class members to penalties. App.242-48.

The deadline to opt out expired on December 4, 2009, after being extended. App.54.

In 2013, the trial court preliminarily approved a partial settlement for the Small Pumper class. App.54. Written notice of the settlement was disseminated. App.54-55, 249-61. It, however, once again misidentified the class in the same way as the 2009 notice. App.8, 252. The 2013 notice likewise did not state any judgment could expose class members to penalties. App.249-61. It gave class members an opportunity to opt out, which expired on December 2, 2013. App.257-58. This was the last time a class member could opt out.

In 2015, a final settlement was preliminarily approved in the Small Pumper class action. App.55. Written notice was disseminated and for the first time described the class consistently with the 2008 certification order. App.55, 265-66. The 2015 settlement notice, however, explicitly did not allow class members to opt out of the class; it only allowed them to raise objections to the settlement. App.269-70.

The trial court entered judgment in the coordinated litigation at large in December 2015, adopting what is called the "Judgment and Physical Solution." App.59-70. At the same time, the trial court entered the "Judgment Approving Small Pumper Class Action Settlements" (App.50-58), which was incorporated into the Judgment and Physical Solution and stated class members were bound by the Judgment and Physical Solution. App.57, 64.

The Judgment and Physical Solution caps water use by Small Pumper class members to three acre-feet per year. App.10, 67. Use above this amount subjects the landowner to monetary penalties, *i.e.*, a "replacement water assessment," imposed by the Antelope Valley Watermaster board ("Watermaster") that was created in the Judgment and Physical Solution. App.10, 67-69. The amount of the penalty is unique to any landowner infringing the judgment as the penalty is calculated based on the amount of that landowner's water overuse multiplied by the variable costs incurred by the Watermaster to obtain replacement water. App.68.

II. Enforcement of the Judgment Against Petitioners and Petitioners' Due Process Arguments in the Trial Court

Since the 1970s, petitioners Johnny and Pamella Zamrzla have owned land in the Antelope Valley and own 120 acres equally divided into three parcels. App.11. They used their land for farming and in most years pumped around 300 acre-feet of water per year from one of the wells on their land. App.12. For two years, however, the well pumped less than 25 acre-feet per year due to irrigation reconfiguration and repairs. App.12. Another well on their land pumped more than or less than 25 acre-feet per year depending on the year. App.13. As such, Johnny and Pamella Zamrzla are simultaneously *not* Small Pumper class members under the 2009 and 2013 notices but *are* class members under the 2008 certification order—a mutually exclusive result.

Petitioner Johnny Lee Zamrzla is the son of Johnny and Pamella. Johnny Lee and Jeanette Zamrzla acquired a 10-acre parcel in the Antelope

Valley around 2007 and now own 20 acres of land. Cal. Ct. App. Rptr. Tr.1618, 1637-38. They also pumped both more and less than 25 acre-feet of water in particular years (App.13), thus making them either members of the class or non-members depending on which class document is consulted.

Petitioners first learned they were subject to a judgment in 2018 when the Watermaster sent them a letter informing them that they were illegally pumping water and levied penalties against them. App.11, *see also* Cal. Ct. App. Rptr. Tr.1208, 1299, 1354, 1626-27. Petitioners did not receive actual notice of the action nor were they aware of the Small Pumper class during the pendency of the action.

The trial court had ordered the 2009 class notice to be distributed by U.S. mail. App.8. The notice was allegedly sent to approximately 9,884 people that appeared on a mailing list. Cal. Ct. App. Appellant App.2075. The trial court ordered the 2013 and 2015 settlement notices to be disseminated by U.S. mail. App.8. The 2013 notice was allegedly mailed to approximately 4,312 individuals pursuant to a mailing list of individuals, and the 2015 notice was allegedly mailed to approximately 4,310 people pursuant to a mailing list. Cal. Ct. App. Appellant App.1959-60, 2054. The 2009, 2013, and 2015 notices were also ordered published in the *Antelope Valley Press*, *Los Angeles Times*, and *Bakersfield Californian*. App.8.

Johnny and Pamella Zamrzla were on a list purporting to state the names of Small Pumper class members and the mailing list for distribution of the 2009 notice. Cal. Ct. App. Appellant App.1986, 2127. It is unknown if they were on the lists for the 2013 and 2015 notices, which were sent to a considerably smaller group than the group that was sent the 2009 notice. They denied ever receiving any of the notices or knowing about the class action.

There is no dispute Johnny Lee and Jeanette Zamrzla were not given individual notice of the class action—notice was not mailed to them, they were not on any mailing list for the class, nor was notice emailed to them or otherwise distributed directly to them in any fashion. App.38-39. The only notice that could have reached them was publication in the newspapers. They deny contemporaneously knowing about the class action.

The Watermaster initiated the litigation from which this petition arises when it filed a motion against petitioners in the state trial court in 2021 to enforce the judgment limiting the amount of water Small Pumper class members can pump and to recover water overuse penalties of over $35,000 plus interest and attorney fees against petitioners. App.11. Petitioners raised their due process challenges in defense. (Formally, the trial court directed petitioners to file motions in equity to modify the class judgment if they wanted to raise their due process challenges, which petitioners did. App.11; *see also* Cal. Ct. App. Rptr. Tr.322-23, 325-29, 331.)

Petitioners' motions argued their due process rights were violated because the methods of providing the notices were insufficient and because the class notices materially misidentified the class by describing the class essentially the opposite of how the certification order described the class. App.174-241; *see also* App.190-194, 205-06, 209-12, 223-26, 233-36, 239-41.

Nevertheless, the trial court ruled petitioners were bound by the class judgment and liable for penalties. App.26-49. The order adopted the description of the class found in the 2008 certification order. App.30. The order found Johnny and Pamella Zamrzla were properly served with notice of the class action by U.S. mail and publication. App.36-38. It found Johnny Lee and Jeanette Zamrzla, though not served by U.S. mail, were properly served by publication alone. App.38-40.

The order made no finding concerning the efforts undertaken to identify the mailing address for Johnny Lee and Jeanette Zamrzla or class member addresses generally. App.38-40. There was no finding that Johnny Lee and Jeanette Zamrzla's mailing address could not be ascertained through reasonable effort. App.38-40. The only relevant finding was the general statement that "it was impractical to capture the names and addresses of every party" that "qualified as a Small Pumper Class Member prior to entry of Judgment." App.15, 38-39. But this is erroneous for Johnny Lee and Jeanette Zamrzla as evidenced by the Watermaster sending them a letter in 2018 informing them they were illegally using water. Cal. Ct. App. Rptr. Tr.1626-27.

The order did not discuss the incompatible class descriptions across the 2008 certification order and 2009 and 2013 notices. App.26-49.

The impact of the order is to substantially cut petitioners' allowable water consumption by about 99%. *Compare, e.g.*, App.10, *with* App.12.

III. Appellate Proceedings

Petitioners appealed to the California Court of Appeal. They argued their due process rights were violated because the class notices were deficient both in the method by which notices were given and in their misleading content. Petitioners argued due process required individual notice, among other things. App.79-80, 88, 111-14. Petitioners also argued the content of the 2009 and 2013 notices violated due process because the notices misidentified the class so badly that it would cause recipients to believe they were not class members who had to take action to opt out. App.79-84, 100-10. Petitioners argued the 2015 notice did not remedy this because it specifically did not allow opt outs. App.82.

The appellate court disagreed. It found the 2015 settlement notice satisfied due process based on the rationale that a lower court has "virtually complete discretion as to the manner of giving notice to class members." App.18. The court therefore found publication of the 2015 notice alone satisfied due process for Johnny Lee and Jeanette Zamrzla and that U.S. mailing and publication satisfied Johnny and Pamella Zamrzla's due process rights. App.19.

For the content, the court sided with petitioners, agreeing the 2009 and 2013 notices were defective as they "misidentified the class." App.8. The court did not express any disagreement that this did not give petitioners a meaningful and real opportunity to opt out of the class. Nevertheless, the court rejected petitioners' argument that this violated due process. It found the 2015 settlement notice described the class consistently with the 2008 order and provided constructive notice of the litigation. App.21. Even though the 2015 notice barred recipients from opting out, the court reasoned that petitioners could have objected to the settlement, and by failing to do so within the time limits established by the notice, time limits to appeal the judgment, or within some undefined period thereafter, petitioners had waived their due process challenges by the time the Watermaster later came to collect penalties and enforce the judgment through litigation. App.21-22.

This reasoning was not raised or briefed by either side. App.128. The court relied on authority neither side cited. App.128-29. The court did not request supplemental briefing on the subject. App.129.

Petitioners requested rehearing. App.125-36. The appellate court denied the request. App.1-2. Petitioners petitioned the California Supreme Court for review, again raising their due process arguments, including that the class notices violated due process by not providing a true opportunity to opt out. App.137-173; *see also*, *e.g.*, App.155-58, 166-67; The California Supreme Court denied review. App.71.

The upshot following these proceedings is that: (i) class members can lose significant real-property rights and be subject to huge out-of-pocket liability in a class action without any attempt to individually notify them of the litigation, as was the case for Johnny Lee and Jeanette Zamrzla; and (ii) a class action can deprive class members of such property without affording them a chance to opt out of the action.

REASONS FOR GRANTING THE PETITION

In *Shutts* the Court stated due process requires absent members of a class action be afforded certain safeguards where the case predominantly concerns claims for monetary relief, and suggested, if not held, that this includes the opportunity for all class members to opt out of the class action. The Court's analysis implies that due process requires class members be afforded greater protections when they face deprivations of property more serious than the loss of the right to sue for money damages as in *Shutts*, such as in defendant classes or when claims are brought against plaintiff class members. The Court, however, explicitly did not decide that issue because the case before it did not raise such facts. The Court has not decided the issue since.

This case from the California state courts, unfettered by any federal law other than the Due Process Clause, provides the Court with the material to do so. No attempt was made to give individual notice of the class action to certain class members, like petitioners Johnny Lee and Jeanette Zamrzla. Class members situated like petitioners were also not afforded an opportunity to opt out. Yet, the class judgment took away class members' real-property rights and exposed the class to serious monetary liability. This is a far greater loss than the right to sue for money damages lost in *Shutts*. The action effectively treated the class more like a defendant class than a plaintiff class.

Granting this petition would allow the Court to define what due process requires in such class actions, including the minimum requirements for how notice is disseminated and the extent to which involuntary class members must be afforded the right to opt out.

Addressing whether due process requires the opportunity to opt out for this class action will also allow the Court to resolve the long-simmering question of whether due process requires opt-out rights when the class action is not predominantly about money damages but adjudicates monetary claims concerning class members. Review will further allow the Court to clear up whether due process requires opt-out rights be given to class members already subject to the forum's jurisdiction.

I. It Is Unsettled What Due Process Protections Are Required for Class Members Subject to Property Loss More Severe than the Loss of the Right to Sue for Damages

The Due Process Clause mandates that persons cannot be deprived of property without due process of law. U.S. Const. amend. XIV, §1. In *Shutts* the Court analyzed due process rights in the context of what protections are owed to absent class members.

The case was a nationwide plaintiff class action prosecuted in Kansas state court that sought recovery for class members who each had relatively minimal damages of "about $100 per plaintiff." *Shutts*, 472 U.S. at 809. The Court considered whether the Kansas court had personal jurisdiction over absent class members who resided out-of-state such that it could adjudicate their claims consistently with due process. *Id.* at 806. The Court found the state court did and held that if the forum state wishes to bind an absent class member "concerning a claim for money damages or similar relief at law, it must provide minimal procedural due process protection." *Id.* at 811-12. The Court identified this as "notice plus an opportunity to be heard and participate in the litigation," and that "due process requires at a minimum that an absent plaintiff be provided with an opportunity to remove himself from the class by executing and returning an 'opt out' or 'request for exclusion' form to the court." *Id.* at 812.

The Court's discussion suggests class members subject to deprivation of property more significant than the loss of a right to sue for damages should be afforded greater rights, but that they at least have the same rights. *Id.* at 808, 810-11. The Court, however, declined to so hold or define what due process requires for such class members. It stated its holding was limited "to those class actions which seek to bind known plaintiffs concerning claims wholly or predominately for money judgments." *Id.* at 812 n.3. It intimated no view "concerning other types of class actions." *Id.* The Court did not extend its analysis to defendant classes. *Id.* Nor did it extend it to plaintiff classes that may face liability, such as through counterclaims or cross-claims, stating "that the disposition of these issues is best left to a case which presents them in a more concrete way." *Id.* at 810 n.2.

Following *Shutts*, courts agree, as suggested by *Shutts*, that due process concerns are more serious for class members situated like petitioners, oftentimes so noting in the context of a defendant class or analogizing to a defendant class. *See, e.g.*, *In re Integra Realty Res., Inc.*, 262 F.3d 1089, 1105 (10th Cir. 2001); *Ameritech Ben. Plan Comm. v. Commc'n Workers of Am.*, 220 F.3d 814, 820 (7th Cir. 2000); *State v. Homeside Lending, Inc.*, 826 A.2d 997, 1007-08 (Vt. 2003).

What remains unsettled, though, is what minimal due process is required for such classes. *See, e.g.*, *Homeside Lending*, 826 A.2d at 1008 ("The Supreme Court has not faced the case it left open in [footnote two of *Shutts*], nor has any other court squarely faced the question"); 2 William B. Rubenstein, *Newberg and Rubenstein on Class Actions* § 5:1 (6th ed. 2022 & June 2026 update) ("due process concerns in defendant class actions are both more pressing and less well-defined"); 1 Joseph M.

McLaughlin, *McLaughlin on Class Actions* § 4:46 (22nd ed. 2025) (noting for defendant classes that "the constitutional requirements for binding absent" class members are unclear and "[u]fortunately, the leading decisions are pre-*Shutts*").

This California class action is a "concrete way" for the Court to consider the open issue from *Shutts*. The class judgment subjects petitioners and other similarly situated class members to loss considerably worse than the loss of the choses in action in *Shutts*. It drastically cuts petitioners' rights to use water on their farmland, which is a deprivation of a real-property right if not a taking. *City of Barstow*, 5 P.3d at 863; *State Water Res. Control Bd.*, 227 Cal. Rptr. at 168; *see also Surfrider Found. v. Martins Beach 1, LLC,* 221 Cal. Rptr. 3d 382, 403 (Cal. Ct. App. 2017) (finding pursuant to the Court's plurality opinion in *Stop the Beach Renourishment, Inc. v. Fla. Dept. of Env't Prot.,* 560 U.S. 702 (2010), that "a court action" that "eliminates an established property right [] must be invalidated as unconstitutional, whether under the takings or due process clauses" if the property deprivation is permanent).[2]

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[2] In *Stop the Beach*, this Court considered whether a judicial decision can effect a compensable taking of property. The plurality opinion concluded that courts are not exempt from the Takings Clause: "If a legislature *or a court* declares that what was once an established right of private property no longer exists, it has taken that property, no less than if the State had physically appropriated it or destroyed its value by regulation." *Stop the Beach*, 560 U.S. at 715 (emphasis original). Four other justices concurred in the judgment but expressly declined to resolve the judicial takings question. *Surfrider Foundation* engaged in a detailed analysis of *Stop the Beach* and ultimately found the injunction at issue there was not a per se taking because the physical intrusion was temporary, not permanent.

The class judgment also makes petitioners liable for tens of thousands of dollars in penalties for water overuse, plus interest and attorney fees. App.11. This makes the class like a defendant class, though nominally a plaintiff class. *Shutts*, 472 U.S. at 808; *see also, e.g.*, *Kamilewicz v. Bank of Bos. Corp.*, 100 F.3d 1348, 1350 (7th Cir. 1996) (Easterbrook, J., dissenting) (observing in class action where plaintiff class members were "net losers" and suffered out-of-pocket money loss that in "effect, though not in name, this was a defendant class").

This case has the circumstances absent from *Shutts* that prevented the Court there from more fully articulating what minimal due process is owed to absent class members. This case is also well poised for the Court to define the rights because California class action procedures do not track those of Rule 23 of the Federal Rules of Civil Procedure, unlike many other states. *See* Cal. Civ. Proc. § 382; Cal. R. Ct. 3.760-3.771. The Court need not consider the impact of the Federal Rules or any other federal law. The Court can consider solely what is required by the Due Process Clause.

A. The State Courts' Conclusion that the Method Class Notice Was Provided Was Sufficient to Bind Petitioners Degrades Due Process

One significant issue the Court should determine or clarify is the minimum due process

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Surfrider Foundation, 221 Cal. Rptr. 3d at 407. Here, in contrast, the trial court's judgment is a permanent deprivation of a property right as it limits petitioners' pumping rights to three acre-feet per year, which guts the economically viable use of petitioners' land.

requirement for how class notice is disseminated where class members face significant losses, and what should be the consequences if notice fails. This is especially momentous for Johnny Lee and Jeanette Zamrzla, who were bound to the class action to their significant loss with no effort made to individually notify them of the case.

The due process standard for how class notice is to be given derives from *Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306 (1950), and requires that notice "be the best practicable, 'reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action [.]'" *Shutts*, 472 U.S. at 812 (quoting *Mullane*, 339 U.S. at 314-15).

Under this, *Mullane* held that due process requires individual notice where the contact information of recipients is known or could be ascertained "within the limits of practicability." *Mullane*, 339 U.S. at 318; *see also Eisen v. Carlisle & Jacquelin*, 417 U.S. 156, 174-75 (1974) ("individual notice must be provided to those class members who are identifiable through reasonable effort"; so noting for notice requirements of the Federal Rules of Civil Procedure for which "due process standards" are incorporated). Notice by publication in such circumstance is "incompatible" with due process. *Mullane*, 339 U.S. at 318, 320.

Mullane, though not a class action, concerned the circumstance where the intended recipients of notice did not stand to lose property rights of the magnitude suffered by petitioners. *Id.* at 313. The only property right actually lost in *Mullane* was a chose in action like in *Shutts*. *Id.* at 311. *Mullane* thus did not consider the circumstances unaddressed by

Shutts when the property loss is more severe. And *Mullane* does not foreclose that due process is more demanding when the detriment is worse as it noted that whether due process is met considers "all the circumstances" and the "peculiarities of the case." *Id.* at 314.

Thus, what due process requires when class members have more at stake is uncertain. For instance, in *Shutts* the Court found due process was satisfied where each class member was sent individual notice by mail and the Kansas state court procedures automatically excluded from the action those members for whom notice was undeliverable. *Shutts*, 472 U.S. at 813-14. To be sure, the Court did not seem to hold such exclusion was mandated by due process in the case before it. *Id.* But where class members are subject to graver property deprivations than in *Shutts*, should due process require such exclusion if individual notice is not or cannot be made to class members? Alternatively, should such class members not be bound by the class judgment?

These are open questions for this type of class action. *See, e.g.*, *In re Integra,* 262 F.3d at 1111 n.18 (declining to answer whether members of a defendant class who did not receive "actual notice" of the class action could challenge the binding effect of class judgment by collateral attack); *cf. also* 7AA *Wright & Miller's Federal Practice & Procedure* § 1789.1 (3d ed. 2005 & 2026 update) (stating that *Shutts* if "[r]ead broadly [] seems to suggest that [where] individual notice cannot be delivered, the court must exclude those members" and "may be read to suggest that a class member" who never "received notice" may not be bound by the class judgment).

This is an ideal case to address these questions, particularly for Johnny Lee and Jeanette Zamrzla. The only notice directed to them was by publication—notice in the nature of "small type inserted in the back pages of a newspaper" the *Mullane* Court decried. *Mullane*, 339 U.S. at 315.

There was also never any finding that Johnny Lee and Jeanette Zamrzla could not have been sent individual notice through reasonable effort. App.38-40. It is improbable, moreover, that they could not have been individually notified by mail or other means. Land ownership records are public, and Johnny Lee and Jeanette Zamrzla had been landowners in the Antelope Valley years before the initial class notice was disseminated in 2009 and had been valley landowners for about eight years by the time of the 2015 notice, the only notice the California Court of Appeal found valid. The Watermaster, furthermore, was able to send them a letter when seeking penalties. *See* Cal. Ct. App. Rptr. Tr.1626-27. If nothing else, class notice could simply have been mailed to every landowner in the valley given the modest number of landowners. *Cf*. *Eisen*, 417 U.S. at 175-77 (requiring individual notice to 2,250,000 class members).

The failure to even try individual notice was profoundly unfair and constitutionally insufficient. Johnny Lee and Jeanette Zamrzla lost more than the absent plaintiffs lost in *Shutts* yet were given fewer protections. If not a patent violation of due process, *Mullane*, 339 U.S. at 315 (the method of notice must seek to "actually inform[] the absentee"), the failure to attempt individual notice reflects the uncertainty and erosion of due process standards for absent class members in these circumstances. The severity of the loss suffered by Johnny Lee and Jeanette Zamrzla is proof of the real-world importance of this Court's defining what due process is owed to class members situated like them.

II. There Is a Conflict Among the Courts on Whether Due Process Requires the Right to Opt Out Where the Class Action Does Not Predominantly Concern Money Claims

Embedded within the broader question of what minimal due process is owed to class members subject to property loss more significant than in *Shutts* is the unresolved matter of whether due process gives class members the right to opt out of class actions that concern members' damages but are not predominantly about damages.

Justices of the Court long ago noted this was unsettled following *Shutts*. *Ticor Title Ins. Co. v. Brown*, 511 U.S. 117, 122-25 (1994) (O'Connor, J. dissenting, joined by Rehnquist, C.J., & Kennedy, J.) (dissent from order dismissing writ of certiorari that was to consider whether "absent class members have a constitutional due process right to opt out of any class action which asserts monetary claims on their behalf"). Most recently, the Court in *Wal-Mart*, suggested there is a "serious possibility" that class members must have the opportunity to opt out under the Due Process Clause if monetary claims, or possibly individualized monetary claims, are raised in the action even if the monetary component does not predominate. *Wal-Mart*, 564 U.S. at 363, 366. But the Court has "never held that to be so" and declined to decide the matter in *Wal-Mart*. *Id.* 363.

The issue thus remains unsettled. *See, e.g.*, *Hecht v. United Collection Bureau, Inc.*, 691 F.3d 218, 222 (2d Cir. 2012) ("The *Dukes* Court, however, avoided deciding the corresponding constitutional question—whether the due process right articulated in *Shutts* now extends to actions where money damages do not predominate"); *see also* 3 Rubenstein, *supra*, at § 18:45 ("The Due Process Clause likely requires that class members in money damage class actions certified under Rule 23(b)(3) be given an opportunity to remove themselves from the class; the Supreme Court has yet to rule on whether such a right exists in (b)(1) and (b)(2) class actions").

Since *Shutts*, circuits have split on the topic and continue to be split after *Wal-Mart*. *Contrast, e.g.*, *Berry v. Schulman*, 807 F.3d 600, 610-11 (4th Cir. 2015) (no due process right to opt out where mandatory class action released claims for statutory and punitive damages); *Juris v. Inamed Corp.*, 685 F.3d 1294, 1331-33 (11th Cir. 2012) (no due process opt-out right in limited fund class action); *In re Monumental Life Ins. Co.*, 365 F.3d 408, 417 (5th Cir. 2004) (no due process right to opt out of mandatory class action seeking monetary damages); *In re Joint E. & S. Dist. Asbestos Litig.*, 78 F.3d 764, 777, 779 (2d Cir. 1996) (no opt-out right to settlement of mandatory class action though class settlement effected amount of potential compensation to class members); *with, e.g.*, *Lemon v. Int'l Union of Operating Eng'rs, Loc. No. 139, AFL-CIO*, 216 F.3d 577, 580-82 (7th Cir. 2000) (grounding analysis in the context of "satisfying the due process concerns" and avoiding "due process problems" and holding that the right to opt out must be afforded in some way in a class action that was predominantly for equitable relief but that concerned individualized class member money damages); *Brown v. Ticor Title Ins. Co.*, 982 F.2d 386, 392 (9th Cir. 1992) (following *Shutts* and finding due process requires the opportunity to opt out of a class action where "monetary claims are involved"), *cert. dismissed*, 511 U.S. at 118.

State opinions are also divided on the issue. *Contrast, e.g.*, *Kragnes v. City of Des Moines*, 810 N.W.2d 492, 503-05 (Iowa 2012) (due process did not require opt-out right in mandatory class action even though action sought to recover unlawfully paid utility franchise fees); *In re Celera Corp. S'holder Litig.*, 59 A.3d 418, 434-36 (Del. 2012) (holding that "due process concerns" should have caused the lower court to exercise discretion and permit opt out in mandatory class action where monetary claims were settled, but not holding due process requires the right to opt out); *Adams v. Robertson*, 676 So. 2d 1265, 1271 (Ala. 1995) ("So long as the relief sought is primarily equitable or injunctive, a class action settlement that also includes money damages with a mandatory non-opt-out provision is proper") (emphasis omitted), *cert. dismissed*, *Adams v. Robertson*, 520 U.S. 83 (1997); *Nottingham Partners v. Dana*, 564 A.2d 1089, 1101 (Del. 1989) ("when a portion of the relief which is sought is monetary, a member of a class certified under Rule 23(b)(2) has a Constitutional due process right to notification but not a right to opt out of the class"); *with, e.g.*, *Carter v. City of Los Angeles*, 169 Cal. Rptr. 3d 131, 144-45 (Cal. Ct. App. 2014) (following *Wal-Mart* and holding due process requires the right to opt out of a class action largely seeking equitable relief where class action settlement dismissed damages claims even though it was improbable damages would be awarded and would be negligible if awarded); *see also Compaq Comput. Corp. v. Lapray*, 135 S.W.3d 657, 667, 668 (Tex. 2004) ("due process may require[] individual notice and opt-out rights to class members who seek monetary damages" in any kind of class action; "we can state that, if damage claims are implicated [in mandatory class actions], constitutional considerations will likely mandate [opt-out] protections").

This case again sets the stage for the Court to provide clarification and resolve the conflicts. None of the three class notices gave petitioners and similar parties a real and constitutionally sufficient chance to opt out, even assuming the class notices had been properly distributed. The two class notices that supposedly allowed the chance to opt out (neither of which mentioned the possibility of penalties) misstated who was a class member so badly that they were equivalent to no notice at all and effectively destroyed the ability to opt out; the notices were illusory. *See, e.g.*, *Twigg v. Sears, Roebuck & Co.*, 153 F.3d 1222, 1227 (11th Cir. 1998) (class notices did not satisfy due process where "their language was insufficient to notify [class member] that claims like his were being litigated in the action"); *cf. also Vassalle v. Midland Funding LLC*, 708 F.3d 747, 759 n.2 (6th Cir. 2013) (the opportunity to opt out is "illusory" and does not satisfy due process where the class notice omits material information); *Kamilewicz*, 100 F.3d at 1349 (Easterbrook, J., dissenting) (a "deficient notice means that the class members' right to opt out was defeated"). The third class notice directly barred the opt-out option.

This class action was also not an action predominantly about money claims. It was a class action that adjudicated the water rights of a group of landowners whose property lay above groundwater *vis-à-vis* other parties in the Antelope Valley staking claims to the groundwater. It was primarily a case for equitable and declaratory determinations concerning a limited resource in the spirit of a limited fund class action; it was akin to a class action under Rule 23(b)(1)(B) of the Federal Rules of Civil Procedure. *See Ortiz v. Fibreboard Corp.*, 527 U.S. 815, 834 (1999) ("Among the traditional varieties of representative suit encompassed by Rule 23(b)(1)(B) were those involving the presence of property which called for distribution or management") (citation modified).

The class action, though not predominantly about money claims, nevertheless had a non-trivial monetary component by permitting the levy of penalties against class members for water overuse. This fits within the framework raised by *Wal-Mart*—money claims concerning all class members are adjudicated, albeit here against class members. Moreover, the monetary claims are *sui generis* for each class member because whether penalties are assessed at all depends on if the class member uses more water than allowed by the judgment and because the amount of any penalty is based on the class member's specific overuse and fluctuating costs incurred by the Watermaster to replace the overuse. App.68.

Finally, as California does not track the Federal Rules of Civil Procedure, the case again does not trigger analysis of the Rules that have upset prior attempts to resolve this constitutional issue. *Ticor*, 511 U.S. at 121-22 (dismissing previously granted petition for a writ of certiorari because to decide the constitutional issue the Court would have had to assume the Federal Rules permitted certification of the class).

III. There Is a Conflict Among the Courts on the Jurisdictional Scope of the Due Process Right to Opt Out

This case also presents an opportunity for the Court to close another ambiguity from *Shutts*, namely the jurisdictional reach of its holding. The background for *Shutts*, as discussed, was whether out-of-state class members could be bound by the Kansas class action, with the petitioner arguing the Kansas court lacked personal jurisdiction over them. *Shutts*, 472 U.S. at 806. The Court's analysis noted that a party can always consent to jurisdiction and suggested that the opt-out procedure sufficiently satisfied due process because out-of-state class members who did not opt out could be deemed to have consented to personal jurisdiction. *Id.* at 812-13.

This analysis of due process in the context of personal jurisdiction has produced conflict among courts. Decisions from the Second, Third, Eighth, and Eleventh Circuits, for instance, view *Shutts* as stating a rule of personal jurisdiction—what due process requires for personal jurisdiction to be asserted over plaintiff class members not otherwise subject to the forum's jurisdiction. *See, e.g.*, *Juris*, 685 F.3d at 1330, 1331 ("*Shutts* is a case about personal jurisdiction"; "courts have concluded, the *Shutts* holding as to what due process requires where a court lacks personal jurisdiction over some class members does not apply where the court has an independent basis for jurisdiction") (citation modified); *In re Joint E. & S. Dist. Asbestos Litig.*, 78 F.3d at 778 (the "*Shutts* holding as to what due process requires where a court lacks personal jurisdiction over some class members does not apply where the court has an independent basis for jurisdiction"); *Grimes v. Vitalink Commc'ns Corp.*, 17 F.3d 1553, 1560-61 & n.8 (3d Cir. 1994) (concluding from *Shutts* that a class member need not be granted the opportunity to opt out of the class action to satisfy due process if the forum otherwise has personal jurisdiction over the class member); *White v. Nat'l Football League*, 41 F.3d 402, 407 (8th Cir. 1994) (ruling *Shutts* does not require absent class members be given the opportunity to opt out to meet due process if the class members are already subject to the court's jurisdiction), *abrogated on other grounds by Amchem Prods., Inc. v. Windsor*, 521 U.S. 591 (1997).

Other Circuits, such as the District of Columbia, Fifth, and Seventh, view the opt-out right more broadly and applicable to all class members, not just to those outside of the forum's jurisdiction. *See, e.g.*, *Harris v. Med. Transp. Mgmt., Inc.*, 77 F.4th 746, 764 (D.C. Cir. 2023) (noting in class action where all class members worked within the District of Columbia that "basic principles of due process" require that class members "be notified that [] they may opt out of the action if they so choose"); *20/20 Commc'ns, Inc. v. Crawford*, 930 F.3d 715, 719 (5th Cir. 2019) (suggesting due process requires all "unnamed" class members be given a right to opt out of the class); *Lemon*, 216 F.3d at 580 ("each class member in actions for money damages is entitled as a matter of due process to personal notice and an opportunity to opt out of the class action").

The states are also in disagreement. *Contrast, e.g.*, *Kragnes*, 810 N.W.2d at 504 (characterizing *Shutts* as concerning whether the forum state had jurisdiction over out-of-state class members and asserting "*Shutts* does not stand for the proposition that the Due Process Clause mandates that all class members must have the opportunity to opt out of a class action case"); *Moelis v. Berkshire Life Ins. Co.*, 887 N.E.2d 214, 218 (Mass. 2008) (characterizing due process requirements from *Shutts* as "an alternative to the traditional minimum contacts test [for personal jurisdiction]"); *Martin v. Drummond Co.*, 663 So. 2d 937, 941 (Ala. 1995) (*Shutts* "pertains when the plaintiff class members do not have such contacts with the forum state as would support an exercise of *in personam* jurisdiction" and holding due process does not require opt-out rights where the forum had jurisdiction over class members); *with, e.g., Carter*, 169 Cal. Rptr. 3d at 144 (due process "requires notice and opt-out rights to class members" for class action involving claims solely localized to the city of Los Angeles; relying on *Shutts* and *Wal-Mart*); *Purcell and Wardrope Chartered v. Hertz Corp.*, 530 N.E.2d 994, 1001 n.3 (Ill. App. 1988) (characterizing *Shutts* as holding that a "nationwide class action" can be maintained in state court so long as "all class members" have the opportunity to opt out).

Indeed, the Court's opinions have not been consistent. *Ortiz* stated *Shutts* was "only examining the procedural protections attendant on binding out-of-state class members [.]" *Ortiz*, 527 U.S. at 848 n.24. More directly, in *Adams* the Court—in dismissing the petition for a writ of certiorari that had been granted to consider whether depriving "all class members the right to exclude themselves from the class" violated due process—suggested *Shutts* considered personal jurisdiction, "not the different and broader question of whether, if a state court has jurisdiction over the plaintiffs, due process requires that all class members have the right to opt out [.]" *Adams*, 520 U.S. at 88-89. Courts have seized on this statement from *Adams* as justification to limit the due process opt-out right to circumstances when the forum does not have another basis for personal jurisdiction over absent class members. *See, e.g.*, *Juris*, 685 F.3d at 1330 n.35; *Kragnes*, 810 N.W.2d at 504.

Other Court decisions, however, suggest *Shutts* established a wider rule of due process for all class members. *Wal-Mart*, 564 U.S. at 363 ("In the context of a class action predominantly for money damages we have held that absence of notice and opt out violates due process" and citing *Shutts* as authority); *AT&T Mobility LLC v. Concepcion*, 563 U.S. 333, 349 (2011) ("For a class-action money judgment to bind absentees in litigation, class representatives must at all times adequately represent absent class members, and absent members must be afforded notice, an opportunity to be heard, and a right to opt out of the class" and citing *Shutts* as support).

Commentators also recognize uncertainty and disagreement on this point. *See, e.g.*, Arthur R. Miller & David Crump, *Jurisdiction and Choice of Law in Multistate Class Actions After Phillips Petroleum Co. v. Shutts*, 96 Yale L.J. 1, 52, 54 (1986) ("One way to view *Shutts* is as a case about distant forum abuse. The right to opt out is essential to the Supreme Court's inference of consent, and that reasoning, in turn, is essential to the Court's validation of jurisdiction over members who have no affiliation with a distant forum. [] Another way to analyze *Shutts* is as a decision protecting the right to opt out for its own sake. In this view, the right to opt out not only is a check against distant forum abuse, but it also protects the claimant's right to control her litigation"); 3 Rubenstein, *supra*, at § 9:40 and n.14 ("Does the federal Constitution's Due Process Clause require (federal and state) courts to grant class members a right to opt out of money damage class actions? The answer to that question is surprisingly unclear"; noting some courts and commentators have adopted a "narrow reading of *Shutts*" as a decision concerning personal jurisdiction).

There are thus a lingering ambiguity and a distinct split over this recurring issue at the heart of class action due process. The ramifications of this uncertainty are significant, particularly for state-wide class actions like here. This case is again uniquely positioned to allow clarity. The class action concerns rights localized to California's Antelope Valley. Petitioners and all class members are landowners in the valley. The California courts have personal jurisdiction over them.

CONCLUSION

The Court should grant this petition for a writ of certiorari.

Respectfully submitted,

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