

04-340 SAN REMO HOTEL V. SAN FRANCISCO, CA

DECISION BELOW: 364 F3d 1088

LOWER COURT CASE NUMBER: 03-15853

QUESTION PRESENTED:

The City and County of San Francisco adopted an ordinance that prohibited hotels from continuing their historic, duly-licensed operation as hotels, but allowed hotel owners to avoid those restrictions by paying an exaction. Petitioners brought this action challenging the exaction based on the Takings Clause of the Fifth Amendment and 42 U.S.C. § 1983. The United States Court of Appeals for the Ninth Circuit initially refused to reach the merits of the constitutional challenge, finding that petitioners were required to ripen their claim by seeking compensation in state court under *Williamson County Planning Commission v. Hamilton Bank of Johnson City*. Once the claim was ripe, the Ninth Circuit again refused to reach the merits of the constitutional challenge, finding that the claim was barred by issue preclusion. In reaching that conclusion, the Ninth Circuit held that the California Supreme Courts' refusal to apply heightened scrutiny to legislative exactions under state law is consistent with federal Takings law. The questions presented are:

1. Is a Fifth Amendment Takings claim barred by issue preclusion based on a judgment denying compensation solely under state law, which was rendered in a state court proceeding that was required to ripen the federal Takings claim?
2. Is deferential scrutiny, akin to the rational basis test, appropriate for exactions imposed by legislation even though exactions imposed by administrative adjudications are subject to heightened scrutiny under *Nollan v. California Coastal Commission* and *Dolan v. City of Tigard*?

LIMITED TO QUESTION 1 PRESENTED BY THE PETITION.

CERT. GRANTED 12/10/2004