No. 13-288

In the Supreme Court of the United States

MHC FINANCING LIMITED PARTNERSHIP and GRAPELAND VISTAS, INC.,
Petitioners,

v.

CITY OF SAN RAFAEL, CALIFORNIA and CONTEMPO MARIN HOMEOWNERS ASSOCIATION,
Respondents.

On Petition for Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF IN OPPOSITION

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PARTIES TO THE PROCEEDING

Petitioners are MHC Financing Limited Partnership and Grapeland Vistas, Inc. (collectively, "MHC"). Respondents are the City of San Rafael and Contempo Marin Homeowners Association.

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The Ninth Circuit's decision in this case does not remotely resemble the doomsday scenario MHC suggests. It does not "effectively eliminate[] any meaningful constraints on local regulation of property rights based on claims of regulatory or private takings." (Pet. at 2.) Nor does it misapply any of this Court's decisions or create a conflict with any other circuit court. It does not transfer nearly all of the value of the investment from MHC to its tenants. This litigation is not the one this Court has been allegedly "awaiting" for over two decades.

Simply put, there is no categorical language or *per se* rule in the opinion that would require, or even suggest, that MHC or any future litigant could establish a taking only by demonstrating the regulation had deprived it of the entire value of its property. The decision below amounts to nothing more than the faithful application of this Court's regulatory takings jurisprudence to the case-specific facts developed in this litigation. The Ninth Circuit examined each prong of the test laid out in *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978), and correctly concluded that no taking occurred where MHC knowingly purchased a mobilehome park subject to rent control and vacancy laws at a significant discount, received millions of dollars in annual returns at industry-comparable capitalization rates, and never petitioned for a discretionary rent increase, which MHC is entitled to do under the ordinance it now challenges. Accordingly, MHC has shown no reason for this Court to grant the petition, particularly where the law at issue represents a legislative attempt to adjust

"the benefits and burdens of economic life to promote the common good" in a state and locality where affordable housing is in incredibly short supply. *Id.* at 124.

Nor does this Court's decision in *Yee v. City of Escondido*, 503 U.S. 519 (1992), suggest that certiorari is warranted in this case. In *Yee*, this Court granted review over a rent control ordinance regarding mobilehomes primarily because "two courts whose jurisdiction includes California, the State with the largest population and one with a relatively high percentage of the Nation's mobile homes" had come to contradictory conclusions on whether those ordinances effected a physical taking of property. *Id*. at 538. In refusing to address Petitioners' regulatory takings argument, the Court noted that "lower courts have not reached conflicting results . . . on whether similar mobile home rent control ordinances effect regulatory takings." *Id.* at 537-538. This remains true to this day. Of the federal courts that have analyzed similar rent control mobilehome ordinances under *Penn Central*, none have found a regulatory taking. *See, e.g.*, *Guggenheim v. City of Goleta*, 638 F.3d 1111, 1118-22 (9th Cir. 2010) (en banc) (applying *Penn Central* factors and holding that mobilehome rent control ordinance did not constitute regulatory taking), *cert. denied*, 131 S. Ct. 2455 (2011); *Page v. City of Rialto*, Nos. 88-6588, 88-6638, 1991 U.S. App. LEXIS 1272, at *1-2 (9th Cir. Jan. 25, 1991) (dismissing *Penn Central* challenge and holding that a mobilehome rent control ordinance "fits comfortably into the category of regulatory cases"). The decision here does not conflict with the Federal Circuit's takings decisions: both courts apply *Penn Central* consistently. That a multi-factor test applied

to the specific facts in different cases might create results that are perhaps slightly asynchronous does not suggest, as MHC would have it, a conflict worthy of review. Instead, it is simply the result of a legal test this Court has long acknowledged "depends largely upon the particular circumstances [in that] case." *Penn Central*, 438 U.S. at 124 (internal quotation marks omitted).

STATEMENT OF CASE

I. Overview

Affordable housing options are particularly necessary in the San Francisco Bay Area, where housing costs are among the highest in the United States. (Pet. App. 35a.) One option adopted in California is the "mobilehome" or "manufactured home," which is a house constructed at a factory. Mobilehomes are frequently built in sections, with each section transported and then joined at the home site. (ER 2295:22-2296:6.) Once installed, a mobilehome can have an indefinite useful life approximating that of a traditional home. (ER 2268:13-2269:9, 3750, 3894-3899, 3904.) Mobilehome owners rent plots of land known as "pads" from the owners of mobilehome parks, who in turn provide basic services and amenities to the homeowners. "Unlike the usual tenant, the mobilehome owner generally makes a substantial investment in the home and its appurtenances—typically a greater investment in his or her space than the mobilehome park owner." *Galland v. City of Clovis*, 24 Cal. 4th 1003, 1009 (2001).

"Because they cost less than traditional homes (less than even rental housing in some circumstances),

manufactured homes are an attractive option for lower-income and poorer residents." *Laurel Park Cmty., LLC v. City of Tumwater*, 698 F.3d 1180, 1184-85 (9th Cir. 2012) (noting residents of mobilehome communities generally have lower incomes than the average household) (citation omitted). Mobilehomes thus serve a vulnerable demographic and represent an important sector of the housing supply.

The availability of mobilehomes is limited, however, by the number of pads available for homeowners to rent from park owners. From 1960 to 1975, the number of mobilehome pads in California increased from 150,000 to approximately 370,000. However, by the 1980s, the production of mobilehome parks in urban areas had virtually halted, and the number of pads in California currently remains near 370,000 spaces, while California has in that time added millions of new residents. (ER 3366:17-3368:4, 4246-4248.) Due to the stagnant supply of pads, vacancy rates in mobilehome parks are extremely low, especially in urban areas like San Rafael. (ER 2263:8-22, 3368:16-21, 4249-4250.) The tight market for space in mobilehome parks—both in San Rafael and throughout California—exacerbates an economic imbalance inherent to mobilehomes.

For a variety of reasons, mobilehomes are mobile in name only. First, the cost of relocating a home can be substantial. (ER 302:3-12, 3368:5-15, 4249-4252.) Second, moving the home may damage it, and results in the loss of any landscaping, appurtenances, or other site-specific improvements by the homeowner. (ER 1665:24-1666:11, 2263:8-14, 3375:10-3376:12.) Third, given near 100% occupancy rates, a homeowner

wishing to leave one park can rarely find a vacant pad to which he or she can move. (ER 2263:15-22, 3371:6-12.) Finally, many mobilehome parks, including Contempo Marin, have rules that allow only new homes to be installed. Thus, once a home has been "used," it cannot be moved to a different park, even if space otherwise existed. (ER 2263:15-22, 3371:13-17, 3872 #8(A).)

Once a home is installed, it is essentially permanently affixed to its pad. When the owner wishes to move, the home is sold in place. (ER 2262:21-2263:7, 3371:3-17; Pet. App. 33a.) A buyer must pay the home price plus whatever the park owner charges for rent on the pad. This practical reality creates asymmetric bargaining power in favor of park owners who have the opportunity to extract exploitative rents from mobilehome owners. Indeed, as the California Supreme Court has noted, "[t]he immobility of the mobilehome, the investment of the mobilehome owner, and restriction on mobilehome spaces, has sometimes led to what has been perceived as an economic imbalance of power in favor of mobilehome park owners. . . ." *Galland*, 24 Cal. 4th at 1010.

In response to the shortage of spaces and immobility of homes, many states have enacted laws protecting mobilehome owners. (ER 4253.) California enacted its Mobilehome Residency Law ("MRL") in 1978. Cal. Civ. Code §§ 798-798.14; *see Yee*, 503 U.S. at 524. (Pet. App. 36a-37a.) Among the protections provided by the MRL, mobilehome owners have the right to sell their homes in place to qualified incoming residents. Cal. Civ. Code § 798.74. While the MRL does not itself impose price

limits on pad rents, it allows cities to enact rent control ordinances.

In addition to regulating rents during occupancy, many California jurisdictions impose "vacancy control," meaning that the controlled rent cannot be increased (or can be increased only by a specified amount) when a mobilehome is sold. (ER 3372:2-22.) In 1995, the California Legislature substantially revised the State's rent control laws and generally prohibited vacancy control. However, the Legislature expressly excluded mobilehomes from that prohibition, thus evidencing a continuing policy supporting mobilehome vacancy control. Cal. Civ. Code §§ 1954.53, 1954.51(b).

There are currently over 100 cities and counties in California that have mobilehome rent control laws similar to the one challenged in this action. Most of these ordinances restrict automatic annual rent increases to 100% or less of the local CPI, and also include vacancy control. (ER 3207:15-22, 3371:18-3373:22, 4253.)

For decades, California courts have been unequivocal in their support for rent and vacancy controls in mobilehome communities. As one court aptly noted, "[m]obile home rent control ordinances are accorded particular deference as rational curative measures to counteract the effects of mobilehome space shortages that produce systematically low vacancy rates and rapidly rising rents." *Carson Harbor Vill. Ltd. v. City of Carson Mobilehome Park Rental Review Bd.*, 70 Cal. App. 4th 281, 290 (1999); *Sandpiper Mobile Vill. v. City of Carpinteria*, 10 Cal. App. 4th 542, 550 (1992) ("Vacancy control . . . is a form of rent control which courts have held to be a legitimate

economic regulation."), *overruled in part on other grounds by Travis v. Cnty. of Santa Cruz*, 33 Cal. 4th 757 (2004); *see also Montclair Parkowners Ass'n v. City of Montclair*, 76 Cal. App. 4th 784, 795 (1999); *Casella v. City of Morgan Hill*, 230 Cal. App. 3d 43, 47 (1991).

II. The Present Controversy

The Contempo Marin Mobilehome Park ("Contempo Marin" or "Contempo"), which includes 396 mobilehome spaces and is home to approximately 1,000 residents, is one of just two mobilehome parks serving the San Rafael area. (Pet. App. 32a.) The City of San Rafael (the "City") has found that a large number of its mobilehomes are occupied by senior citizens on fixed incomes who may not be able to afford other housing. (Pet. App. 109a.) Further, residents of Contempo Marin generally have lower incomes and are older than other residents of San Rafael or Marin County. (ER 3596-3599, 3602-3603, *see also* Trial Exs. 1004-1017.) Locating affordable housing within the community is a practical impossibility for many of these residents, as most nearby housing options are four to nine times more expensive. (ER 3270:18-3271:18.)

In 1989, five years before MHC purchased Contempo Marin, the City of San Rafael enacted its Mobilehome Rent Stabilization Ordinance (the "Ordinance") pursuant to the MRL. (ER 4043-4061.) The Ordinance limited automatic annual rent increases to between 66% and 100% of the Consumer Price Index ("CPI") depending on the level of CPI, and allowed park owners to seek additional increases through a fair return process. (Pet. App. 37a-38a.) Following this Court's holding in *Yee v. Escondido* that price controls in mobilehome parks do not constitute a physical

taking, the City amended the Ordinance to include vacancy control in 1993—a full year before MHC purchased Contempo Marin ("1993 Amendment"). (Pet. App 182a; ER 3772-3868, 3818-3822, 4062-4086.)

In 1999, five years after MHC bought Contempo Marin, the City of San Rafael made two minor modifications to the Ordinance ("1999 Amendment"). (ER 3714-3745, 4087-4093.) First, San Rafael replaced the graduated scale for automatic rent increases—in place since 1989—with an automatic increase to a flat 75% of CPI, regardless of the CPI level. Second, the 1999 Amendment changed the manner in which capital pass-throughs are recovered and accounted for. (Pet. App. 206a, 115a.)

When MHC, a Real Estate Investment Trust that owns multiple mobilehome parks, purchased Contempo Marin in 1994, it did so for only $18.9 million—a price plainly representing a rent-controlled income stream. (ER 3008:10-18.) Sixteen of MHC's California parks were subject to rent control when MHC purchased them. This case is one of four unsuccessful cases MHC has filed claiming that mobilehome rent and vacancy control are unconstitutional. *Equity Lifestyle Props., Inc. v. Cnty. of San Luis Obispo*, 548 F.3d 1184 (9th Cir. 2008); *MHC Fin. Ltd. P'ship Two v. City of Santee*, 234 Fed. App'x 439 (9th Cir. 2007); *Manufactured Home Cmtys., Inc., v. City of San Jose*, 420 F. 3d 1022 (9th Cir. 2005).

Since MHC's purchase of Contempo Marin, it has made a steady and substantial return on its investment. Even under rent control, MHC has earned between 7.7% and 9.8% each year, or adjusting for inflation, between 6.7% to 8.8%—a rate of return that

is comparable to the capitalization rate currently used in the market for mobilehome parks. (ER 3421:14-3423:9, 3423:10-3424:18, 4281-4282, 4285, 4290-91.) The park has also increased in value. MHC's own economist estimated the park's current value at $40 million—more than double the price MHC paid for the park in 1994. (ER 3290:5-14.)

MHC exaggerates the financial burden of the Ordinance. It knowingly purchased Contempo Marin subject to both rent and vacancy control. Because the 1999 Amendment is the only relevant regulatory change while MHC has owned the park, the proper baseline against which to analyze its constitutional claims is the effect of the 1999 Amendment, *not* a world without rent control. Under the pre-1999 sliding scale, MHC would have collected $24.6 million from 1999 to March 2007, but under the flat 75% CPI automatic increase instituted by the 1999 Amendment, it collected $23.8 million in rent. (ER 4292-4293.) Thus, over a period of nearly a decade, the 1999 Amendment caused less than a 3% decrease in MHC's rental income stream. Moreover, since purchasing the Park, MHC has not petitioned for a discretionary rent increase as it is entitled to do by section 20.12.050 of the Ordinance. (ER 1167:6-19, 2834:9-11, 3038:25-3040:15, 4366:6-4369:3.) If MHC were not receiving a fair return, it could seek relief. It has chosen not to do so.

Just like MHC, the homeowners of Contempo Marin have structured their economic affairs in light of the existing rent controls that have been in place for decades. The average homeowner at Contempo Marin purchased their mobilehome within the past 10 years (Pet. App. 34a), and each successive homeowner has

paid a price that reflected, in part, the future-controlled rents.[1] (Pet. App. 160a.) Indeed, far from merely affecting a one-time transfer of value to the then-existing homeowners as MHC claims,[2] rent and vacancy control have served to create enduring home equity assets that have been transferred from one homeowner to the next. The Ordinance has stabilized the value of these home equity assets, and, as designed, allowed the homeowners to recoup their cost of capital and home improvement investments upon sale. In the absence of rent and vacancy control, these investments would be transferred to MHC, which—as it did during the pendency of the district court's errant injunction—would simply raise the pad rent to the point the resale value of the mobilehome was reduced to its salvage value. [3]

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[1] MHC argued below that any price over an arbitrarily depreciated "book value" was a "premium" caused by rent control. The evidence, however, showed that homes in non-rent controlled areas routinely sell for more than the book values relied on by MHC and its experts. (ER 2283:14-2287:9, 2292:17-20.)

[2] The "premium" theory MHC's economist proposed assumes that when vacancy control is enacted there is a theoretical one-time transfer of the value of vacancy control from the landlord to the existing residents. That theoretical transfer, of course, occurs when vacancy control is enacted—here in 1993, *before* MHC purchased the Park. (Pet. App. 76a, 182a.)

[3] Under the terms of the district court's injunction, mobilehome pads lost their rent-protected status upon sale of the overlying home. In the four years the injunction was in place, MHC succeeded in deregulating over 60 mobilehome pads, doubling the rent on many of these pads.

Contempo Marin is not the country club portrayed by *amici*. As a population that is generally older and of a lower income than the surrounding communities, many of the current homeowners have little or no life savings outside the equity in their homes. (Pet. App. 76a.) This equity will be lost if homeowners are forced to sell or abandon their homes due to the loss of rent control, and if the vacated units are subject to exorbitantly high rent increases due to the loss of vacancy control.

III. Procedural History

MHC filed this lawsuit—one of its several unsuccessful attempts to topple price control ordinances in mobilehome communities across California—in 2000. At the time, it relied on a single regulatory takings theory: that the Ordinance as amended in 1999 failed to substantially advance a legitimate state interest. (ER 4817-4824.) That legal theory was rendered defunct by this Court's decision in *Lingle v. Chevron U.S.A. Inc.*, which rejected the use of the "substantially advances" test in the takings context, thereby dooming MHC's takings claims. 544 U.S. 528, 529 (2005).

The district court, however, granted MHC leave to amend its complaint. MHC filed its Second Amended Complaint in February 2006—three years after the first trial concluded—tacking sharply to claim instead that the Ordinance constituted a regulatory taking under *Penn Central*, a private taking under *Kelo v. City of New London*, 545 U.S. 469 (2005), and that it denied MHC substantive due process under *Lingle*. (Pet. App. 7a-8a.)

The district court conducted a second bench trial in April and May 2007, during which it heard five days of testimony spread over several weeks. The court issued preliminary findings of fact and conclusions of law on July 26, 2007, and rendered its final order on January 28, 2008, concluding that the Ordinance as amended in 1999 affected a regulatory taking under *Penn Central* as well as a private taking under the Public Use Clause of the Fifth Amendment. The Court further held that the Ordinance did not deny MHC due process of law under the Fourteenth Amendment. In 2009, the district court permanently enjoined the City from enforcing the Ordinance, but phased out its enforcement over ten years. (Pet. App. 163a.)

In concluding that the Ordinance failed the first two *Penn Central* factors, the district court relied almost exclusively on evidence describing a rent and vacancy control-free market. It determined that the Ordinance resulted in a loss of economic value and interfered with MHC's reasonable expectation "to achieve market appreciation [in its investment] over time" because absent rent and vacancy control, the mobilehome park—for which MHC paid only $18.9 million—would, according to the district court, be worth approximately $120 million. (Pet. App. 54a-55a, 59a-60a.) It further held that the character of the ordinance gave rise to a regulatory taking because, "[t]hrough the Ordinance, the City has singled out MHC to bear a public burden that . . . should be borne by the public as a whole." (Pet. App. 61a.)

In determining that the Ordinance constituted a private taking, the district court eschewed rational basis review and instead applied a heightened form of

scrutiny, reasoning that its role was to "look to the regulation's operation, not just its aim, to ascertain its true nature." (Pet. App. 78a-79a.) It rejected all three independent justifications for the Ordinance proffered by the City: protection of mobilehome owner equity; creation of more affordable housing; and protection of fixed-income residents (*id.* at 71a)—concluding that "the mobilehome owners' only equity in their mobilehomes is the salvage value of their units . . . [t]he Ordinance fail[ed] to fulfill the City's broader objective of making housing more affordable," and that "[t]o the extent that housing is not made more affordable, low and fixed-income individuals cannot be benefitted." (Pet. App. 73a-74a, 76a-78a.) Notably, although the district court purported to find that "[t]here was in fact no basis for any of the stated grounds for enactment," its findings cited almost none of the legislative record or other evidence presented by the City. (Pet. App. 40a; *compare* ER 82-83 ¶25 *with* ER 3772-3868.)

The district court properly applied rational basis review in rejecting MHC's substantive due process claim, explaining that the standard "[f]or judicial scrutiny of price-control regulation under the Due Process Clause [is] well established: 'Price control is unconstitutional if arbitrary, discriminatory, or demonstrably irrelevant to the policy the legislature is free to adopt.'" (Pet. App. 84a (citing *Pennell v. City of San Jose*, 485 U.S. 1, 11 (1988)).)

On appeal, the Ninth Circuit upheld the district court's rejection of MHC's substantive due process claim and concluded that the Ordinance did not constitute either a *Penn Central* or private taking.

(Pet. App. 18a, 20a.) In addressing the district court's *Penn Central* ruling, however, the Court of Appeals first highlighted the most glaring flaw in the district court's reasoning:

> [The district court's] analysis [of economic impact] assumes that MHC purchased the property prior to the enactment of the original ordinance, when it did not . . . the appropriate analysis of the economic impact on MHC is a comparison of the economic impact of the 1993 Ordinance in effect when MHC purchased the mobilehome park, and the economic effect of the 1999 Ordinance enacted after the property acquisition. (Pet. App. 14a-15a.)

It further explained that, even if the district court's comparison had been accurate, an 81% diminution in value, in itself, would not have been, in these circumstances, "sufficient economic loss or interference with MHC's reasonable investment-backed expectations to constitute a taking." (Pet App. 15a.) Likewise, in addressing MHC's investment-backed expectation, it considered the amount MHC paid for the mobilehome park, and further explained that although MHC could not have anticipated the 1999 Amendment to the Ordinance, it "had even less reason to expect that the rent control regime would disappear altogether." (Pet App. 16a.) Lastly, it determined that the ordinance was "much more an 'adjust[ment of] the benefits and burdens of economic life to promote the common good'" than a physical invasion of property. (Pet. App. 17a.)

In concluding that the Ordinance did not constitute a private taking, the Court of Appeals held that the

district court erred in applying heightened scrutiny to MHC's claim, explaining that "[w]hen the legislature's purpose is legitimate and its means are not irrational, our cases make clear that empirical debates over the wisdom of takings—no less than debates over the wisdom of other kinds of socioeconomic legislation—are not to be carried out in the federal courts." (Pet. App. 20a (quoting *Kelo*, 545 U.S. at 488 (citation omitted)).) Finally, the Court of Appeals also held that the district court "was correct that the Ordinance does not run afoul of substantive due process" explaining that "[t]he threshold for a rationality review challenge asks only 'whether the enacting body could have rationally believed at the time of enactment that the law would promote its objective.'" (Pet. App. 23a (quoting *Equity Lifestyle Props., Inc.*, 548 F.3d at 1194).)

MHC now petitions for a writ of certiorari to review the Ninth Circuit's decision.

REASONS FOR DENYING THE PETITION

The Petition should be denied because it seeks review of a case-specific decision that properly applied settled law to the unique facts of a particular case.

Woven throughout MHC's brief is the notion that the Ninth Circuit's ruling departed from settled precedent and, if left undisturbed, would eliminate all constitutional limits on government takings. (Pet. at 12.) This argument is precisely backwards. In truth, the Ninth Circuit faithfully applied the constitutional principles crafted by this Court to uphold a valid law seeking to promote affordable housing, and it is MHC that seeks to up-end these well-established precepts and invent new law.

Although MHC contends that the Ninth Circuit grossly misapplied the *Penn Central* factors to its regulatory taking claim, even a cursory examination of the Ninth Circuit's analysis demonstrates that it did nothing of the sort. Instead, MHC appears to take issue with the merits of the *Penn Central* test, and mistakenly contends that because the factual circumstances in this particular case did not give rise to a taking, no court could *ever* find a taking under these factors. But looking past MHC's rhetoric, it is clear that the Ninth Circuit properly applied the correct legal principles to reach the right outcome; that MHC is unsatisfied with the result is no reason to reconsider well-established precedent. Likewise, even though it is settled beyond dispute that rational basis review applies to claimed violations of the Public Use Clause, MHC asks this Court to disturb decades of this Court's jurisprudence and apply a heightened form of scrutiny to MHC's private takings claim—all without citing a single federal case applying such a standard. And although MHC claims that the Ninth Circuit erred in refusing to apply the "substantially advances" formulation to its substantive due process claim, this argument ignores this Court's rejection of this very standard in *Lingle*, in which it reaffirmed the long-standing principle that federal courts are not well-suited to the task of scrutinizing the efficacy of socioeconomic legislation.

That the Ninth Circuit's ruling is consistent with well-settled law is reinforced by MHC's failure to highlight any hint of confusion—much less a cognizable circuit split—created by the decision. Although MHC attempts to manufacture a split of authority between the Federal Circuit and the Ninth Circuit as to all

three *Penn Central* factors, both Circuits agree that: (1) no percentage diminution in value necessarily satisfies the "economic impact" requirement; (2) the existence of a pre-purchase regulation is material to, but does not preclude, a finding that the regulation interferes with investment-backed expectations; and (3) the correct test for assessing the "character of the government action" is whether the effect of a regulation is akin to a physical invasion of property.

MHC's claim of "confusion" as to the role of pretext in Public Use takings cases is similarly meritless. In support, MHC cites a handful of state and federal court cases affirming the general principle that the scope of judicial review in the context of Public Use takings is "extremely narrow," a finding that is entirely consistent with *Kelo* and the Ninth Circuit's reasoning below.

Finally, review is also not merited because this case presents a multitude of case-specific factual issues that would need to be analyzed should the Court adopt the heightened scrutiny MHC demands. To compound the problem, most of the district court's findings below are not entitled to judicial deference, but are instead improper findings of legislative fact. *Christian Sci. Reading Room Jointly Maintained v. San Francisco*, 807 F.2d 1466, 1468 (9th Cir. 1986) (explaining that that "[a] wealth of Supreme Court cases establishes that courts should not independently determine legislative facts"). Thus, the detailed factual record is in itself a form of error, rather than a guide for future cases.

I. Certiorari Is Not Warranted Because the Court of Appeals Properly Rejected MHC's *Penn Central* Claim.

A. The Court of Appeals Correctly Applied the *Penn Central* Factors in a Manner Consistent with Federal Circuit Precedent.

Unable to identify any legitimate controversy over the Ninth Circuit's *Penn Central* analysis, MHC instead misleadingly claims that the Order somehow resulted in a series of *per se* rules that "effectively nullified the regulatory taking doctrine." (Pet. at 14.) At every turn, MHC characterizes the Ninth Circuit's application of well-established legal standards to the facts at hand as sweeping bars to future takings challenges. But the Ninth Circuit did no such thing.

1. The Economic Impact of the Regulation

MHC claims that "[t]he Ninth Circuit . . . effectively adopted a rule requiring the complete *elimination* of value, not just a diminution 'however serious,' to establish a regulatory taking." (Pet. at 10 (emphasis in original).) This argument mischaracterizes the Ninth Circuit's ruling and ignores the applicable standards.

Far from "adopt[ing]" a new deviant standard, the Ninth Circuit simply quoted this Court's own statement that "'mere diminution in the value of property, however serious, is insufficient to demonstrate a taking.'" (Pet. App. 15a (quoting *Concrete Pipe & Prods. of Cal., Inc. v. Constr. Laborers Pension Trust for S. Cal.*, 508 U.S. 602, 645 (1993))

(citations omitted).) Applying this well-established rule, the Ninth Circuit determined that—regardless of whether or not it used MHC's fuzzy math as to the magnitude of its purported loss[4]—this factor favored a finding of no taking because the only economic impact MHC had shown was a diminution in value. (*Id*.)

Undeterred, MHC argues that "it is now impossible in the Ninth Circuit to demonstrate a taking '[w]here a regulation places limitations on land that fall short of eliminating *economically beneficial use*.'" (Pet. at 18 (emphasis added).) But the Ninth Circuit's ruling goes nowhere near this far; nor could it, based on the facts of this case: MHC has undeniably made beneficial use of its property under the Ordinance, earning an unadjusted 7.7% to 9.8% rate of return from mobilehome park operations. (ER 3421:14-3423:9, 3423:10-3424:18, 4281-4282, 4285, 4290-91.)

Moreover, every case MHC cites to attempt to establish a circuit split is consistent with the Ninth Circuit's analysis. (*See* Pet. at 24-25.) As the Federal Circuit has recognized, "no percentage diminution in value *necessarily* results in a compensable regulatory taking." *Cienega Gardens v. United States*, 331 F. 3d 1319, 1345 (Fed. Cir. 2003) (emphasis in original). Rather, courts must "properly weigh[] all the relevant considerations, including percentage diminution in value" to determine whether there has been a "severe

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[4] The idea that MHC suffered any "loss" requires significant mental gymnastics, as MHC's own economist testified that the value of the property in 2007 was $40 million, *twice* the amount MHC paid for it. (ER 3290:5-14.)

economic impact." *Yancey v. United States*, 915 F.2d 1534, 1541 (Fed. Cir. 1990).

Indeed, in *Yancey* the court placed substantial weight on the fact that the claimants' entire right to sell their turkeys as breeding stock—"the purpose for which they were raised"—had been taken. *Id*. The court then found a severe economic impact because, in addition to suffering a loss in value, the claimants had no "opportunity to use [their] property in other economically viable ways." *Id*. at 1341-42.

So too the Federal Circuit in *Cienega Gardens* based its economic impact finding on more than mere loss in value. There, the regulation completely "remove[d] . . . the [claimants'] contractual right to prepay and then repossess the[ir] real property." 331 F. 3d at 1344-45. As a result, the claimants were "limited to an annual return of approximately 0.3% . . . ." *Id*. at 1342. MHC, having earned 7.7% to 9.8% annually on its investment, simply cannot claim it was similarly impacted. (ER 3421:14-3423:9, 3423:10-3424:18, 4281-4282, 4285, 4290-91.)

And in *Florida Rock Industries, Inc. v. United States*, the Federal Claims Court "d[id] not rely on the magnitude of th[e] diminution in value *alone* . . . to determine the severity of the economic impact." 45 Fed. Cl. 21, 36 (1999) (emphasis added). Instead, the court found a severe economic impact because, in addition to causing a 73.1% loss in value, the plaintiff's entire "right to mine limestone [was] effectively destroyed by the regulation," leaving it "with only the right to hold its land or sell it to another—rights vastly different both in value and in kind from the right to mine limestone." *Id*. at 42-43.

In each case, the claimant suffered more than a mere loss in value alone. Here, MHC has lost neither the right to rent its property as a mobilehome park nor the right to earn a reasonable return on its investment. As a result, its claim would fail in either Circuit.

2. MHC's Distinct Investment-Backed Expectations

It is tautological that MHC's *investment-backed* expectations are to be measured by reference to its *actual investment*. Here, as the Ninth Circuit observed, the price MHC paid for Contempo was undoubtedly discounted to reflect the expectation—held by both MHC and the market—that the property would remain "burden[ed by] rent control." (Pet. App. 17a (quoting *Guggenheim*, 638 F.3d at 1120).) Rather than face this fact head-on, MHC attempts to manufacture a conflict with this Court's opinion in *Palazzolo*, claiming that the "Ninth Circuit found the existence of prior regulation 'fatal' to MHC's regulatory taking claim."[5] (Pet. at 25 (citing *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001)); *see also id*. at 20.) This is not so.

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[5] In the passage cited by MHC, the Ninth Circuit merely noted that, in *Guggenheim*, the plaintiffs' lack of "distinct investment-backed expectations [was] 'fatal' to the[ir] takings claim." (Pet. App. 17a.) A close reading of *Guggenheim* shows that there, as here, the Ninth Circuit properly considered the existence of pre-purchase regulation as material to—but not preclusive of—a finding that the regulation interfered with distinct investment backed expectations. 638 F.3d at 1120. In neither case did the Ninth Circuit apply a claim-barring "categorical rule" as MHC contends. (Pet. at 25.)

Palazzolo merely held that the existence of a pre-purchase regulation does not *bar* a *Penn Central* challenge. The Ninth Circuit's opinion is wholly consistent with this rule. 533 U.S. at 630. Rather than applying a "categorical rule" (Pet. at 25), the Ninth Circuit duly "consider[ed MHC's] claim under the principles set forth in *Penn Central*" and found no taking. *Palazzolo*, 533 U.S. at 616 (remanding to state court to consider *Penn Central* factors). In particular, as to MHC's distinct investment-backed expectations, the Ninth Circuit considered the regulatory environment existing at the time of purchase[6] and the amount MHC invested in Contempo before finding that "this factor . . . favor[ed] the conclusion that no taking occurred." (Pet. App. 17a (emphasis added).) *Palazzolo* simply cannot be read to compel a different result.[7]

MHC also argues that, when it purchased Contempo, regulatory takings jurisprudence was so uncertain that MHC's investment-backed expectation was that the Ordinance would be overturned. (Pet. at 22 (citing *Yee*, 503 U.S. 519).) On the contrary, MHC

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[6] As Justice O'Connor noted in her *Palazzolo* concurrence, "the regulatory regime in place at the time the claimant acquires the property at issue helps to shape the reasonableness of [its investment-backed] expectations." 533 U.S. at 633. "Indeed, it would be just as much error to expunge this consideration from the takings inquiry [as MHC urges] as to accord it exclusive significance." *Id*.

[7] *Palazzolo* involved a highly unique set of facts and limited holding and is inapposite for a number of reasons. First and foremost, at the time the claimant in *Palazzolo* invested in the subject property, it, unlike Contempo Marin, was not subject to any regulation.

submitted no evidence of its contemporaneous belief, and the only evidence adduced at trial indicates that MHC had no expectation that the Ordinance would be overturned. MHC purchased 16 mobilehome parks in California subject to rent control. (ER 2987:21-2994:1, 3023:18-3029:19, 4244.) MHC's 10-K statements at the time and afterwards reflect a clear understanding and expectation that it would own properties where rents are controlled as they are in San Rafael. (ER 2758:16-2759:19, 4200.) MHC's senior executives disclaimed under oath any plan to buy rent-controlled properties and then challenge rent control. (ER 4562:2-4563:12, 2720:22-2721:14.) And MHC continued to buy similarly controlled properties for years, both before and after filing this lawsuit. (ER 2721:23-2726:20.)

Further, any such expectation would not have been reasonable. Indeed, the Ordinance was upheld against a regulatory takings challenge immediately before MHC purchased Contempo. (ER 4209-4240.) The Ninth Circuit had also upheld a virtually identical ordinance the prior year in *Levald, Inc. v. City of Palm Desert*, 998 F.2d 680 (9th Cir. 1993).[8] As the Ninth Circuit explained in *Guggenheim*, "'[d]istinct investment-backed expectations' implies reasonable probability, like expecting rent to be paid, not starry eyed hope of winning the jackpot if the law changes." 638 F.3d at 1120. It would be circular to credit MHC's alleged contemporaneous desire to have the Ordinance overturned as a reason to overturn the Ordinance.

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[8] The district court here expressly held that this case is indistinguishable from *Levald*. (Pet. App. 86a.)

Finally, there is no split between the Circuits on this issue. Like the Ninth Circuit, the Federal Circuit considers a pre-purchase regulation material to—but not preclusive of—a finding that the regulation interfered with distinct investment-backed expectations. *See Appolo Fuels, Inc. v. United States*, 381 F.3d 1338, 1349 (Fed. Cir. 2004) ("Appolo's reasonable investment-backed expectations are shaped by the regulatory regime in place as of the date it purchased the leases at issue."); *Rith Energy, Inc. v. United States*, 270 F.3d 1347, 1351 (Fed. Cir. 2001) ("[A] business engaged in a highly regulated industry . . . necessarily understands that it can expect the regulatory regime to impose some restraints on its right to mine coal under a coal lease"); *Commonwealth Edison Co. v. United States*, 271 F.3d 1327, 1350 n.22 (Fed. Cir. 2001) (en banc) ("As Justice O'Connor's concurring opinion in *Palazzolo* makes clear . . . the regulatory environment at the time of the acquisition of the property remains both relevant and important in judging reasonable expectations.").

3. The Character of the Ordinance

MHC's argument that the "character of the ordinance" factor looks to "whether a landowner has been 'singled out'" (Pet. at 26) turns the *Penn Central* test on its head. The entire regulatory takings inquiry *as a whole* is designed to determine whether a regulation "'forc[es] some people alone to bear public burdens, which, in all fairness and justice, should be borne by the public as a whole.'" *Palazzolo*, 533 U.S. at 617-18 (quoting *Armstrong v. United States*, 364 U.S. 40, 49 (1960)). Indeed, MHC's erroneous "singled out" standard is plucked from a discussion in *Lingle* of this

"general principle [of] the Takings Clause." *Lingle*, 544 U.S. at 542-43. The "singled out" language was not used during a *Penn Central* analysis, let alone in analyzing the character of the ordinance factor.

Instead, the well-established test for the "character of the ordinance" factor—which the Ninth Circuit duly applied—is whether a regulation is more properly "'characterized as a physical invasion by government [or] some public program adjusting the benefits and burdens of economic life to promote the common good.'" (Pet. App. 17a (quoting *Penn Central*, 438 U.S. at 124).) The only Federal Circuit case that MHC contends conflicts with the Ninth Circuit's decision applied this same well-established test, concluding that the regulation at issue "could fairly be characterized as akin to this type of physical invasion."[9] *Cienega Gardens*, 331 F.3d at 1338.

II. Certiorari Is Not Warranted Because the Court of Appeals Properly Rejected MHC's Public Use Clause and Substantive Due Process Claims.

In arguing that San Rafael's rent control ordinance violates the Public Use Clause, MHC invites this Court to reinvent precedent twice over. Not only does MHC request that this Court ignore decades of well-settled Supreme Court precedent and adopt a heightened form of scrutiny to its private takings claim, MHC further asks the Court to recognize an entirely new form of private taking based on a price-control regulation—a

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[9] Indeed, the phrase "singled out" does not appear anywhere in *Cienega Gardens*.

fact it fails to acknowledge, much less justify, in its Petition.

MHC's substantive due process argument is equally flawed. In asserting that both the district court and Court of Appeals erred in applying rational basis review to its substantive due process claim, MHC seeks to resuscitate arguments foreclosed by *Lingle*.

A. Certiorari Is Not Warranted as to MHC's Public Use Clause Claim.

There is no merit to MHC's argument that the Ninth Circuit erred in applying rational basis review to MHC's claim that the San Rafael Ordinance violates the Public Use Clause. Relying solely on Justice Kennedy's concurrence in *Kelo*, 545 U.S. at 477, MHC seeks to up-end decades of Supreme Court and federal jurisprudence establishing that "[t]he role of the judiciary in determining whether [the eminent domain] power is being exercised for a public purpose is an extremely narrow one." *Berman v. Parker*, 348 U.S. 26, 32 (1954). Rational basis review is the proper standard because "[a]ny departure from this judicial restraint would result in courts deciding on what is and is not a governmental function and in their invalidating legislation on the basis of their view on that question at the moment of decision, a practice which has proved impracticable in other fields." *Haw. Hous. Auth. v. Midkiff*, 467 U.S. 229, 240-41 (1984) (citation omitted). This reasoning is sound, and nothing in MHC's brief comes close to refuting it.

1. The Court of Appeals Properly Applied Rational Basis Review, Which Is the Appropriate Standard When Addressing Claimed Violations of the Public Use Clause.

This Court has repeatedly endorsed applying rational basis review to purported violations of the Public Use Clause. In *Midkiff*, for example, the unanimous Court expressly rejected the same form of heightened scrutiny that MHC urges the Court to adopt here. 467 U.S. at 243 (disagreeing with the Ninth Circuit's determination that "more rigorous judicial scrutiny of the public use determinations was appropriate"). According to the Court, the "deference to the legislature's 'public use' determination is required 'until it is shown to involve an impossibility.'" *Id.* at 240. It further opined that federal courts should "not substitute [their] judgment for a legislature's judgment as to what constitutes a public use 'unless the use be palpably without reasonable foundation.'" *Id.* at 240-41 (citations omitted). In applying this standard, the Court clarified that "whether *in fact* the provision will accomplish its objectives is not the question: the [constitutional requirement] is satisfied if . . . the . . . [state] Legislature *rationally could have believed* that the [Act] would promote its objective." *Id.* at 242 (citing *W. & S. Life Ins. Co. v. State Bd. of Equalization*, 451 U.S. 648, 671-72 (1981) (emphases in original)). Thus, this Court concluded that "[w]hen the legislature's purpose is legitimate and its means are not irrational, our cases make clear that empirical debates over the wisdom of takings . . . are not to be carried out in the federal courts." *Id.* at 242-43.

Time and again, this Court has affirmed the principles espoused in *Midkiff*. *See, e.g.*, *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1014 (1984); *Lingle*, 544 U.S. at 538. Most recently, in *Kelo*, 545 U.S. 469, this Court applied rational basis review to conclude that a government taking satisfied the Public Use Clause, explaining that "[w]ithout exception, our cases have defined [the public use] concept broadly, reflecting our longstanding policy of deference to legislative judgments in this field." *Id.* at 480. It further rejected the argument that "[the Court] should require a 'reasonable certainty' that the expected public benefits will actually accrue" because "[s]uch a rule . . . would represent an even greater departure from our precedent." *Id.* at 487-88.

These principles confirm that the Ninth Circuit reached the right result here, particularly since this Court has "long recognized that a legitimate and rational goal of price or rate regulation is the protection of consumer welfare," *Pennell*, 485 U.S. at 13, and one court after another has upheld the constitutionality of rent control laws as rationally related to a legitimate public purpose. *See, e.g.*, *Action Apartment Ass'n, Inc. v. Santa Monica Rent Control Bd.*, 509 F.3d 1020, 1024 (9th Cir. 2007) ("That rent control may unduly disadvantage others, or that it may exert adverse longterm effects on the housing market, are matters for political argument and resolution; they do not affect the constitutionality of the Rent Control Law.") (internal quotation marks and citation omitted); *Equity Lifestyle Props., Inc.*, 548 F.3d at 1194 (challenged ordinance "clear[ly]" satisfied rational basis review where its stated purpose was to "'protect the owners and occupiers of mobilehomes from unreasonable rent

increases . . . '"); *Montclair Parkowners Ass'n*, 76 Cal. App. 4th at 795 ("protection of the current mobilehome owners' equity in their homes and protection of prospective mobilehome owners from excessive rents are legitimate government interests").

In a radical departure from these precepts, the trial court conducted a "searching review of the record" (Pet. at 30)—scrutinizing and rejecting three independent justifications for the Ordinance proffered by the City—and ultimately justifying its analysis by reasoning that it "must look to the regulation's operation, not just its aim, to ascertain its true nature." (ER 119 ¶ 149.) The Ninth Circuit correctly recognized that the district court's heightened scrutiny contravened this Court's teachings in *Midkiff* and *Kelo*, explaining that "the Supreme Court has declared that a taking should be upheld as consistent with the Public Use Clause as long as it is rationally related to a conceivable public purpose." (Pet. App. 18a-19a (internal quotation marks omitted).)

2. Justice Kennedy's Concurrence in *Kelo* Does Not Warrant a Contrary Result.

MHC fails to cite even *a single case* applying a heightened form of scrutiny to a private taking claim, pointing instead to Justice Kennedy's concurrence in *Kelo*. According to MHC, review is warranted because the Ninth Circuit's application of rational basis review "directly conflicts with the precepts announced in Justice Kennedy's . . . concurrence." (Pet. at 31.) This argument strains credulity for multiple reasons.

To start, no other Justice joined this concurring opinion, and the dissenting Justices met it with considerable skepticism. *Id.* at 502 (O'Connor, J., joined by Rehnquist, Scalia, Thomas, JJ., dissenting). And of course, a lone concurrence is not binding precedent. *See Maryland v. Wilson*, 519 U.S. 408, 412-13 (1997). This is particularly true because every Court of Appeals confronted with a private takings claim after *Kelo* has consistently applied rational basis review. *Dahlen v. Shelter House*, 598 F.3d 1007, 1012 (8th Cir. 2010); *Fideicomiso de la Tierra del Caño Martin Peña v. Fortuño*, 604 F.3d 7, 18 (1st Cir. 2010); *Carole Media LLC v. N.J. Transit Corp.*, 550 F.3d 302, 310 (3d Cir. 2008); *United States v. 14.02 Acres*, 547 F.3d 943, 952 (9th Cir. 2008); *Goldstein v. Pataki*, 516 F.3d 50, 62 (2d Cir. 2008). In any event, Justice Kennedy does not, as MHC asserts, propose "cabin[ing]" rational basis scrutiny when evaluating a claim that public benefits are pretextual. (Pet. at 29.) On the contrary, his concurrence explains that "[the] deferential standard of review" he proposes "echoes the rational-basis test used to review economic regulation under the Due Process and Equal Protection Clauses[.]" *Kelo*, 545 U.S. at 490 (Kennedy, J., concurring in judgment). For all of these reasons, MHC's reliance on Justice Kennedy's concurrence in *Kelo* is unavailing.

3. There Is No "Confusion" Over the Role of Pretext in Takings Claims.

There is likewise no merit to MHC's argument that there is "confusion" over the role of pretext in private takings claims involving the Public Use Clause. Indeed, the few cases MHC cites are entirely consistent

with the Ninth Circuit's application of rational basis review to MHC's private takings claim.

In *Fideicomiso de la Tierra del Caño Martin Peña v. Fortuño*, 604 F.3d 7, 23 n.13 (1st Cir. 2010),[10] the court applied rational basis review in rejecting appellant's claim that a transfer of lands to public agencies violated the Public Use Clause, explaining that "[p]ublic policy disagreements about the best of several rational means to accomplish legitimate public purposes are not the grist of a Takings Clause claim . . . 'When the legislature's purpose is legitimate and its means are not irrational . . . empirical debates over the wisdom of takings . . . are not to be carried out in the federal courts.'" *Id.* at 18 (citing *Midkiff*, 467 U.S. at 242-43 and *Goldstein*, 516 F.3d at 57-58). In *Franco v. National Capital Revitalization Corp.*, 930 A.2d 160 (D.C. Ct. App. 2007), the Court reversed the trial court's order striking defendant's affirmative defense in condemnation proceedings that the declared public purpose was pretextual. *Id.* at 162. In allowing the claim to proceed beyond the pleading stage, the court explained that *Kelo* "did not repudiate" the general principle that "[t]he role of the judiciary in determining whether th[e] power [of eminent domain] is being exercised for a public purpose is an extremely narrow one," *id.* at 175 (citing *Berman*, 348 U.S. at 32), and cautioned against divining "the motives and intentions of individual legislators." *Id.* at 173, 175. Likewise, in

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[10] Although MHC cites *Fideicomiso* for the proposition that "it was not foreclosing a later as-applied challenge . . . 'under the mere pretext of a public purpose'" (Pet. at 32), this citation appears to be a scrivener's error, as it cites to the concurrence rather than the majority opinion.

County of Hawaii v. C & J Coupe Family Ltd. Partnership, 242 P.3d 1136 (Haw. 2010), the Court rejected appellant's claim that the government's stated justification for its condemnation of property to construct a highway was pretextual. It explained that "legislative findings and declarations of public use are accorded great weight and are entitled to prima facie acceptance of [the determination's] correctness. . . . [T]o overcome this prima facie acceptance, a defendant must show that such a finding of public use is manifestly wrong." *Id.* at 1147-48 (citation and internal quotation marks omitted). In short, nothing in the reasoning of these cases refutes *Kelo*'s affirmation of rational basis review to private takings claims. There is no "confusion," let alone a circuit split, that merits certiorari.

4. Certiorari Is Not Warranted Because a Price Regulation Does Not Constitute a Private Taking.

MHC ignores a critical flaw in its argument that the Ordinance constitutes a private taking. Each of the private takings cases cited by MHC involved the condemnation of private property and the transfer of title from one private actor to another. As noted by the Ninth Circuit, no court has ever recognized a regulatory private taking like the one MHC asserts here—*i.e.*, that a price control regulation "takes" money from one private actor (the landlord or seller) and transfers it to another (the lessee or purchaser). (Pet. App. 18a.) That is with good reason. As this Court recognized in *Yee*, most land-use laws transfer wealth from one actor to another, and "the existence of the transfer in itself does not convert regulation into

physical invasion." *Yee*, 503 U.S. at 529-30. At bottom, MHC seeks to drastically expand the scope of private takings jurisprudence without any supporting case law or argument. This is not an appropriate basis for review.

B. The District Court and the Court of Appeals Properly Applied Rational Basis Review to MHC's Substantive Due Process Claim.

Federal courts have consistently and uniformly held that price control ordinances in mobilehome communities easily satisfy rational basis review because, in addition to "control[ling] the rental price of the land on which the mobile home is situated," these regulations "alleviate the hardship" caused by "the high cost of moving mobilehomes . . . the lack of alternative homesites for mobilehome residents and the substantial investment of mobilehome owners in such homes." *Guggenheim*, 638 F.3d at 1122; *see also Equity Lifestyle Props., Inc.*, 548 F.3d at 1194. Thus, MHC's only hope is to argue that both courts below erred in applying rational basis review to its substantive due process claim. Relying on little more than a single statement in Justice Kennedy's concurrence in *Lingle*, MHC asserts that "*Lingle* suggests that the 'substantially advances' test is alive and well—so long as it is a test applied in the substantive due process context and not the takings context." (Pet. at 34.) This argument is beset with problems.

MHC's reliance on Justice Kennedy's non-binding concurrence to argue that heightened scrutiny applies here is particularly misguided because this argument squarely contradicts the "well established" tenets

reaffirmed by the unanimous Court in *Lingle*. 544 U.S. at 545. In rejecting the "substantially advances" formula, the Court noted the "serious practical difficulties" posed by "heightened means-end review of virtually any regulation of private property." *Id.* at 544. The *Lingle* Court further explained that because of the "hazards" of "empower[ing] . . . courts to substitute their predictive judgments for those of elected legislatures and expert agencies" it had "long eschewed such heightened scrutiny when addressing substantive due process challenges to government regulation." *Id.* at 544-45 (citations omitted).

Against this backdrop, MHC's inability to cite even one case applying the "substantially advances" test in the takings context is unsurprising. Indeed, since *Lingle*, circuit courts have uniformly applied rational basis review to substantive due process claims relating to property. *See, e.g.*, *Ramsey Winch, Inc. v. Henry*, 555 F.3d 1199, 1210 (10th Cir. 2009); *Bowers v. Whitman*, 671 F.3d 905, 916-17 (9th Cir. 2012); *SB Bldg. Assocs., L.P. v. Borough of Milltown*, 457 Fed. App'x. 154, 157 (3d Cir. 2012); *Yur-Mar, L.L.C. v. Jefferson Parish Council*, 451 Fed. App'x. 397, 401 (5th Cir. 2011). These cases are consistent with the long line of authority establishing that challenges to economic regulations are presumptively valid absent a showing that they lack a rational basis. *Usery v. Turner Elkhorn Mining Co.*, 428 U.S. 1, 15 (1976) ("It is by now well established that legislative Acts adjusting the burdens and benefits of economic life come to the Court with a presumption of constitutionality, and that the burden is on one complaining of a due process violation to establish that the legislature has acted in an arbitrary and irrational way.") (collecting authority).

Once again, nothing in MHC's brief comes close to refuting this long-standing precedent. Accordingly, this argument too fails, and provides no basis for review.

CONCLUSION

For the reasons stated above, the Ninth Circuit correctly denied MHC's constitutional claims, and, in any event, this case fails to meet the requirements for certiorari. Accordingly, the Contempo Marin Homeowners Association respectfully requests that MHC's petition for writ of certiorari be denied.

Respectfully submitted,

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