

No.

In the Supreme Court of the United States

GEORGE SHEETZ,

Petitioner,

v.

COUNTY OF EL DORADO, CALIFORNIA,

Respondent.

*On Petition For A Writ Of Certiorari
To The California Court Of Appeal,
Third Appellate District*

PETITION FOR A WRIT OF CERTIORARI

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QUESTIONS PRESENTED

El Dorado County conditioned issuance of George Sheetz's residential building permit on a requirement that he pay a \$23,420 traffic impact mitigation fee designed largely to offset impacts of new commercial development in addition to the relatively small traffic impacts of his proposed home. The court below upheld the exaction under a state court created rule that the County's use of a "rational" legislative process to establish the fee program satisfies both the nexus requirement of *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and the rough proportionality requirement of *Dolan v. City of Tigard*, 512 U.S. 374 (1994). The court therefore held that the County's legislative requirement that residential developers pay for impacts caused by commercial development satisfied *Nollan* and *Dolan*.

1. Does the Takings Clause's protection against unconstitutional permit conditions encompass *an evidentiary* requirement (as opposed to a *legislative process*) by which the government bears the burden to demonstrate that its development permit exaction complies with *Dolan's* "rough proportionality" standard?

2. Can an impact fee be roughly proportional when imposed on one discrete class of development (residential) for the purpose of addressing impacts caused by another discrete class of development (commercial)?

**PARTIES TO THE PROCEEDING AND
RULE 29.6 STATEMENT**

Petitioner George Sheetz was the plaintiff and appellant below.

Respondent County of El Dorado, California, was the defendant and appellee below.

Mr. Sheetz is a natural person.

STATEMENT OF RELATED CASES

These proceedings are directly related to the above-captioned case under Rule 14.1(b)(iii):

Sheetz v. County of El Dorado, 335 Cal. Rptr. 3d 316 (3d App. Dist. July 29, 2025)

Sheetz v. County of El Dorado, 601 U.S. 267 (April 12, 2024)

Sheetz v. County of El Dorado, 84 Cal. App. 5th 394 (3d App. Dist. Oct. 19, 2022)

Sheetz v. County of El Dorado, Case No. PC20170255 (Cal. Super. Ct., Cnty. of El Dorado, Feb. 4, 2021)

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PETITION FOR A WRIT OF CERTIORARI

El Dorado County's demand that George Sheetz pay \$23,420 as a condition on his permit to construct a single residential home in part to mitigate for impacts attributable to commercial development violates the Takings Clause's principal purpose of protecting individual property owners from being forced "to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

The unconstitutional conditions doctrine enforces that guarantee by preventing the government from conditioning a land-use approval on an exaction of private property (including money) unless the government demonstrates that its demand bears an essential nexus to a public purpose that would otherwise justify denial of the permit and rough proportionality to identified, adverse impacts of the proposed use. *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825, 837 (1987); *Dolan v. City of Tigard*, 512 U.S. 374, 387 (1994); *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604-05, 619 (2013). Those tests provide a constitutionally grounded check on government's broad permitting authority, which is otherwise prone to exploitation, by requiring courts to distinguish true and lawful mitigation conditions from uncompensated takings. *Koontz*, 570 U.S. at 604-05; *Sheetz v. Cnty. of El Dorado*, 601 U.S. 267, 276 (2024).

This petition focuses on the "rough proportionality" prong of that heightened scrutiny which requires government to demonstrate that the amount of property exacted by the permit condition sufficiently reflects the "nature and extent" of a proposed project's

contribution to the problem.¹ *Dolan*, 512 U.S. at 389, 391; *Novick v. Myers*, 330 Or. 154, 158 (2000) (“‘Proportional’ means ‘being in proportion: corresponding in size, degree, or intensity’ or ‘having the same or a constant ratio.’”) (citation omitted). As the court below noted, “since *Dolan* was decided in the early 1990s, the Supreme Court has not provided further guidance as to the contours of the *Dolan* standard.” App. 44a, 45a (“As the law developed without high court guidance, so did conflicts between the states’ various approaches to the *Dolan* standard.”). This case presents an ideal vehicle to provide that guidance.

The court below ruled the impact fee an exaction but excused the government from producing evidence to justify its reallocation of commercial impacts to residential development, relying on California’s Mitigation Fee Act (MFA) and pre-*Sheetz* caselaw that rubberstamp legislatively imposed exactions so long as the “method” employed in creating the fee schedule is rational. App. 49a, 54a-55a, 58a-59a. In so doing, the court below replaces the constitutionally required, empirical question of whether an impact fee is appropriately limited to mitigating effects of the subject development with a procedural question of whether the government engaged in a rational methodology in developing its fee program. App. 58a (“we conclude the County met its initial burden to demonstrate that it used a valid *method* for imposing the TIM fee, one that established a *reasonable relationship* between the fee charged and the projected burdens (i.e., social costs or public impacts)

¹ The petition does not challenge the nexus holding below. Appendix (App.) 26a-36a.

of Sheetz’s development of a single-family home”) (emphasis added).

As a practical matter, this reinstates the legislative exemption to *Dolan*’s rough proportionality test that this Court unanimously rejected. *Sheetz*, 601 U.S. at 280. California enacted the MFA prior to this Court’s decision in *Dolan* to codify then-existing law.² In 1996, however, the California Supreme Court held that the MFA encompasses both *Nollan*’s nexus requirement and *Dolan*’s rough proportionality requirement. *Ehrlich v. Culver City*, 12 Cal. 4th 854, 860 (1996) (plur. opn. of Arabian, J.). It did so despite the fact that the MFA effectively directs courts to evaluate legislative exactions under a deferential test that assesses only the rationality of the legislation that authorized the exaction. Cal. Gov’t Code § 66001(a)(4) (asking “*how*” the government determined that “there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed”) (emphasis added). “How” means “in what manner or way,”³ describing a process. To satisfy this test of process, government needn’t produce any evidence whatsoever as to the impacts created by proposed development, much less the “individualized determination” required under the Takings Clause. *Dolan*, 512 U.S. at 391; see also *Am. Legion v. Am. Humanist Ass’n*, 588 U.S. 29, 72 (2019) (Kavanaugh, J., concurring) (“the Constitution sets a floor for the

² See Cal. Gov’t Code § 66005(c) (last amended 1988) (“This section is declaratory of existing law and shall not be construed or interpreted as creating new law or as modifying or changing existing law.”).

³ *How*, Merriam-Webster Dict., <https://www.merriam-webster.com/dictionary/how> (visited Jan. 9, 2026).

protection of individual rights. The constitutional floor is sturdy and often high . . .”).

This Court remanded *Sheetz* to the California Court of Appeal to address the merits of Sheetz’s claim, and the court correctly recited the rule that legislative exactions are subject to scrutiny under the *Nollan/Dolan* test. App. 22a. However, as an intermediate court, it was controlled by *Ehrlich*’s holding that the MFA’s treatment of legislative exactions mirrors the *Nollan/Dolan* tests. App. 50a (the California Supreme Court historically “equat[ed] California’s reasonable relationship test with *Nollan/Dolan* scrutiny”) (citing *Ehrlich*, 12 Cal. 4th at 865, 867); *Auto Equity Sales, Inc. v. Superior Court*, 57 Cal. 2d 450, 455 (1962) (lower courts bound by higher court decisions). Sheetz petitioned the California Supreme Court to revisit *Ehrlich*, but the court refused and swept the inconsistency under the rug by decertifying publication. App. 150a; Cal. R. Ct. 8.1105(e)(2), 8.1115 (depublished opinion binds individual parties, but lacks precedential weight and cannot be cited in subsequent cases).

Although uncitable in California state courts, the opinion remains in electronic databases and its treatment of this Court’s decision threatens to spread.⁴ *Cnty. of Los Angeles v. Kling*, 474 U.S. 936, 938 & n.1 (1985) (Stevens, J., dissenting). That risk is particularly pronounced here because courts have

⁴ This decertification has already caused controversy in other jurisdictions. See *Coalition for Fairness in Soho & Noho, Inc. v. City of New York*, ___ N.E.3d ___, No. 112, 2026 WL 88133, at *7 n.5 (N.Y. 2026) (relying on California rules in refusing to give persuasive weight to the decertified case); *id.* at *16 n.2 (Garcia, J., dissenting) (relying on the decertified case and disregarding California rules).

struggled with *Dolan* for decades, resulting in widespread conflicts and inconsistent protection of property rights. Some courts, including the court below, determine the constitutionality of a legislative exaction based solely on the rationality of the authorizing legislation. Others require the government to demonstrate that the resulting exaction is roughly proportionate to the projected impacts of the *class* to which the subject development belongs. Still other courts require the government to show that the exaction is sufficiently related to the *individual* development against which it is imposed.⁵

Using the MFA’s “reasonable relationship” test that predated *Sheetz*—and *Dolan*—effectively reinstates the deferential approach to exactions imposed via legislation. It cannot be true that, after *Sheetz*, nothing changed. *See Sanford’s Estate v. Comm’r*, 308 U.S. 39, 54 (1939) (earlier policy held to be “sharp conflict with our own decisions . . . cannot be continued without the perpetuation of inconsistency and confusion”). Certainly El Dorado County and the state and local governments that opposed *Sheetz* before this Court anticipated that applying *Nollan/Dolan* analysis to legislatively-imposed

⁵ Three states enacted legislation adopting a “reasonable relationship” test substantially similar to California’s test, two states adopted a modified version of the test, and multiple states have the “essential nexus” and “rough proportionality” tests as set out by *Nollan* and *Dolan*. *See* Br. Am. Curiae State of Cal. et al., *Sheetz v. Cnty. of El Dorado*, 601 U.S. 267 (2024) (No. 22-1074), 2023 WL 8894564, at *6-7; *see also* El Dorado Cnty. Respondent’s Br., *Sheetz v. Cnty. of El Dorado*, 601 U.S. 267 (2024) (No. 22-1074), 2023 WL 8719004, at *45-47 (discussing state and federal cases applying versions of the nexus and proportionality tests to legislative exactions, including fee schedules).

exactions required a different, more stringent analysis.⁶ This Court should grant the petition to ensure that the test applied by the state and lower federal courts is consistent with the rules and principles set out by this Court’s takings precedents. *See Vetterli v. U.S. Dist. Ct. for Cent. Dist. of Cal.*, 435 U.S. 1304, 1308 (1978) (Rehnquist, J.) (inviting petition for writ of certiorari if lower court rules in conflict with recently decided Supreme Court decision).

OPINIONS BELOW

The unpublished decision of the California Court of Appeal, *Sheetz v. County of El Dorado*, 335 Cal. Rptr. 3d 316 (Ct. App. 2025), is reprinted at App. 1a.

⁶ *See, e.g.*, El Dorado Cnty. Respondent’s Br., *Sheetz*, No. 22-1074, 2023 WL 8719004, at *50 (urging “no . . . expansion” of the analysis provided by the Mitigation Fee Act); Br. Am. Curiae City and Cnty. of San Francisco, et al., *Sheetz v. Cnty. of El Dorado*, 601 U.S. 267 (2024) (No. 22-1074), 2023 WL 8869700, at *32 (“[B]y requiring individualized review of each specific project, such a holding . . . mak[e] the requirements for a legislatively imposed impact fee—including fees adopted under the MFA—as stringent as those for a compelled dedication of a possessory interest in land or a discretionary exaction.”); Br. Am. Curiae State of Cal. et al., *Sheetz*, No. 22-1074, 2023 WL 8894564, at *11 (“It is one thing to require a property-specific determination when the permitting agency is already conducting an individualized adjudicative proceeding of its own volition. It would be quite another thing to require that type of individualized analysis for fees set by a legislative formula applying to a class of development projects.”); Br. Am. Curiae Nat’l Ass’n of Clean Water Agencies, et al., *Sheetz v. Cnty. of El Dorado*, 601 U.S. 267 (2024) (No. 22-1074), 2023 WL 8894565, at *10 (“Requiring impact fees to meet the heightened *Nollan* and *Dolan* standard means ‘the flexibility of state and local governments to take the most routine actions to enhance their communities will diminish accordingly.’”) (citation omitted).

The court's Order Denying Reconsideration is reprinted at App. 149a. The California Supreme Court's order denying the petition for review and decertifying the appellate court's opinion for publication is reprinted at App. 150a.

JURISDICTION

The decision of the California Court of Appeal was issued on July 29, 2025, and the Court denied reconsideration of that decision on August 18, 2025. On November 12, 2025, the California Supreme Court denied discretionary review and decertified the appellate court's opinion for publication. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

The Takings Clause of the United States Constitution provides that "private property [shall not] be taken for public use without just compensation." U.S. Const. amend. V.

California's Mitigation Fee Act is codified at California Government Code §§ 66000-66025. The Act's relevant subsection reads as follows:

(a) In any action establishing, increasing, or imposing a fee as a condition of approval of a development project by a local agency, the local agency shall do all of the following:

...

(3) Determine how there is a reasonable relationship between the fee's use and the type of development project on which the fee is imposed.

(4) Determine how there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.

Cal. Gov't Code § 66001(a).

El Dorado County Resolution No. 021-2012, the ordinance that adopted the Traffic Impact Fee Schedule at issue in this case, is reproduced at App. 151a.

STATEMENT OF THE CASE

This case returns to this Court after a California Court of Appeal addressed the merits of Sheetz's unconstitutional conditions claim as directed by *Sheetz*, 601 U.S. at 280. Although this Court ruled that there is "no basis for affording property rights less protection in the hands of legislators than administrators," *id.* at 279, the appellate court found itself bound by a thirty-year-old California Supreme Court holding that legislative exactions are evaluated only under the state's deferential "reasonable relationship" test. App. 50a, 53a-55a.

A. California's "Reasonable Relationship" Test

California's "reasonable relationship" test has deep roots in the state. In the 1940s, California courts held all exactions (legislative and adjudicative) subject only to a test that asked whether a permit condition seeking a dedication of property was "reasonably related to the protection of the public health, safety and general welfare." *Ayres v. City Council of City of Los Angeles*, 34 Cal. 2d 31, 39 (1949). *Ayres* adopted that deferential standard on the theory that the protections guaranteed by the Takings Clause must

give way to the government's police powers. *Id.* at 42-43 (citing *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 387 (1926)).

As exactions became more common, California courts allowed local government to exact private property based upon a showing of any general public need. *See Associated Home Builders, Inc. v. City of Walnut Creek*, 4 Cal. 3d 633, 638 (1971). Thus, when faced with the Coastal Act's demands that coastal property owners dedicate public beach easements as a condition of permit approval, California courts upheld the exactions because the "reasonable relationship" test requires "only an indirect relationship between a proposed exaction and a need to which the development contributes." *Grupe v. Cal. Coastal Comm'n*, 166 Cal. App. 3d 148, 164-66 (1985); *see also Nollan v. Cal. Coastal Comm'n*, 177 Cal. App. 3d 719, 723-25 (1986) (upholding permit condition under the test set out by *Associated Home Builders* and *Grupe*).

This Court rejected California's "reasonable relationship" test as too lax to protect private property rights. *Nollan*, 483 U.S. at 830, 839-40. The constitution requires a closer fit—i.e., an "essential nexus"—between the permit condition and problem sought to be remedied. *Id.* at 837-38. California courts, however, read *Nollan's* requirement to apply only to adjudicative exactions, and continued to apply the "reasonable relationship" standard to legislative exactions such as the County's traffic impact fee. *Sheetz*, 601 U.S. at 276.

The MFA codified that distinction while referring to both exactions tests as encompassing a "reasonable relationship"—nomenclature that often results in confusion. The test applicable to certain *adjudicative*

conditions requires a “more specific determination” of “the amount of the fee and the cost of the public facility or portion of the public facility attributable to the development on which the fee is imposed.” *Sheetz v. Cnty. of El Dorado*, 84 Cal. App. 5th 394, 408 (2022), *vacated and remanded by Sheetz*, 601 U.S. at 280. Conversely, courts provide “substantial judicial deference” when reviewing legislative exactions, *id.* at 416, requiring only that the government show “how” it determined that “there is a reasonable relationship between the need for the public facility and the type of development project on which the fee is imposed.” Cal. Gov’t Code § 66001(a)(4); *see also Tanimura & Antle Fresh Foods, Inc. v. Salinas Union High Sch. Dist.*, 34 Cal. App. 5th 775, 792, 801 (2019) (explaining that “the required showing ‘need not be so close or so thoroughly established for legislatively imposed fees as for ad hoc fees’”) (citing *San Remo Hotel L.P. v. City and Cnty. of San Francisco*, 27 Cal. 4th 643, 671 (2002)).

Thus, while the MFA’s “reasonable relationship” test requires local governments to generate “nexus studies,” *see, e.g., Boatworks, LLC v. City of Alameda*, 35 Cal. App. 5th 290, 299 (2019), it limits heightened scrutiny to certain ad hoc adjudicative exactions. *Ehrlich*, 12 Cal. 4th at 865; *San Remo Hotel*, 27 Cal. 4th at 667 (adopting *Ehrlich* plurality as a majority opinion), and retains the state courts’ more deferential version of the “reasonable relationship” test for evaluating legislative exactions. *See Ehrlich*, 12 Cal. 4th at 898 n.2 (California’s legislature intended the “reasonable relationship” standard to “conform to case law,’ i.e., *Associated Home Builders* and related California cases.”) (Mosk, J., concurring). *Ehrlich* additionally held that the MFA’s “reasonable

relationship” tests embodied *both* the nexus and rough proportionality tests despite pre-dating *Dolan*. 12 Cal. 4th at 867 (“in the wake of *Dolan* the term ‘reasonable relationship’ embraces both constitutional and statutory meanings which, for all practical purposes, have merged *to the extent* that the *Dolan* decision applies to development fees”). At the time, that “extent” stopped short of legislatively enacted fees. *Id.* at 865; *San Remo*, 27 Cal. 4th at 667.

In 2015, the California Supreme Court acknowledged that the “reasonable relationship” test for legislative exactions, derived from due process principles, appeared to conflict with this Court’s more recent takings jurisprudence. *Cal. Bldg. Indus. Ass’n v. City of San Jose (CBIA)*, 61 Cal. 4th 435, 473 n.18 (2015). It observed that *Ehrlich*’s rationale for concluding that the statutory test was functionally equivalent to the *Nollan/Dolan* test relied on the “substantially advances a government interest” formula that this Court excised from takings law in *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528, 542-43, 547-48 (2005). *See CBIA*, 61 Cal. 4th at 485 (Werdegar, J., concurring) (The “reasonable relationship test for legislatively formulated mitigation fees is best understood to state a due process standard, not a takings one.”).

Because the California Supreme Court refuses to revisit *Ehrlich* and *San Remo*, all California courts *must* determine the constitutionality of legislative exactions under a substantially deferential due process-based test that offers significantly less protection to property owners than the test applicable to adjudicative exactions.

B. Sheetz and the Traffic Impact Fee

In 2016, Sheetz applied for a permit to build a small, manufactured house on his rural El Dorado County property. The County conditioned the permit on payment of several fees, including \$23,420 for “traffic impact mitigation” pursuant to the County’s legislatively approved 2012 TIM Fee Schedule. *Sheetz*, 601 U.S. at 272.

The reason for El Dorado County’s huge residential traffic fee is undisputed. In 2004 the County updated its General Plan to identify deficiencies in its road system and to determine the cost of addressing those needs over a 20-year time frame. Administrative Record (AR) 2291-92. The County determined that it needed to raise more than \$572 million to pay for the planned improvements. AR 3524, 4353. To avoid proposing new taxes, the County adopted a policy that new development “fully offset and mitigate all direct and cumulative traffic impacts from new development” by subsidizing the outstanding cost of purchasing rights-of-way, constructing new roads, and widening existing roads through impact fees. *All. for Resp. Plan. v. Taylor*, 63 Cal. App. 5th 1072, 1075-76 (2021); *Sheetz*, 84 Cal. App. 5th at 402.

The County began developing its TIM Fee Program by following ordinary, industry standard practices of identifying impacts and allocating mitigation costs to the appropriate class of development. But the County quickly realized that if it based its traffic fees on the actual number of vehicle trips generated by each class of new development, the fees on commercial development (which is responsible for 40% of all traffic impacts) would skyrocket. App. 186a-188a.

The County wanted to avoid that outcome because it would discourage commercial investment and impede economic growth. To lighten the burden on new commercial development while ensuring that all impacts were fully offset by new development, the County reallocated costs from non-residential to residential so that 84% of the projected traffic mitigation costs are absorbed by residential impact fees and 16% are absorbed by commercial development. App. 63a n.14, 187a-188a.

The County justified its decision to make residential development pay the lion's share of commercial traffic impacts based on an economic survey speculating that a significant number of businesses provided goods and services to local residents and "it *seems* that as population increases, local serving jobs can be expected to increase as well." AR 2090 (emphasis added). Although the survey spoke to population growth across existing and projected households and identified multiple other reasons why businesses may be drawn to the area, AR 2091, the County determined that new residences *alone* should bear the full burden of mitigating the portion of anticipated commercial traffic impacts attributable to new local service businesses (like banks, gas stations, restaurants, and grocery stores). App. 187a-188a.

Consequently, the traffic impact fee remained nearly static across all classes of commercial development between 2004 and 2012, while fees on new single-family homes nearly doubled. *Compare* App. 156a-168a (2012 fee schedule) *with* AR 83 (2004 fee schedule). In real numbers, Sheetz was required to pay the same fee for an 1,854-square-foot home generating an estimated 9.2 daily vehicle trips as a

gas station generating 510 daily trips or an 11,000-square-foot office building generating 485 daily trips. AR 3216-17; 4239-40.

C. Procedural History

1. Sheetz paid the fee under protest and filed a petition for writ of mandate in the California Superior Court, seeking a refund of the fee on the ground (among others)⁷ that the exaction was an unconstitutional condition on his building permit under *Nollan* and *Dolan*. *Sheetz*, 601 U.S. at 272.

The County demurred, and the trial court ruled that “the TIM fee was not subject to the requirements of *Nollan* and *Dolan* (and therefore did not violate the ‘unconstitutional conditions doctrine’ as a matter of law) because it is a legislatively prescribed development fee that is generally applicable to a broad class of property owners.” *Sheetz*, 84 Cal. App. 5th at 403. The Court of Appeal affirmed. *Id.* at 405-07, 417. This Court thereafter granted his petition for a writ of certiorari.

2. This Court unanimously rejected California’s legislative exactions rule because “[n]othing in constitutional text, history, or precedent supports exempting legislatures from ordinary takings rules.” *Sheetz*, 601 U.S. at 276. The Court explained that the takings rules applicable to *all* exactions are the “essential nexus” and “rough proportionality” tests established by *Nollan* and *Dolan*. *Id.* at 275-77, 279.

This Court declined to address the doctrine’s application to the challenged impact fee because those arguments had not been decided by the state courts. *Id.* at 280. The Court instructed that further con-

⁷ None of Sheetz’s other claims are at issue here.

sideration on remand may include whether “a permit condition imposed on a class of properties must be tailored with the same degree of specificity as a permit condition that targets a particular development.” *Ibid.*

3. The California Court of Appeal retained jurisdiction on remand to determine whether the traffic impact fee was an unconstitutional condition. Both parties agreed that the existing record was complete and closed. App. 176a. With no further factfinding required, the court ordered the parties to submit a “supplemental opening brief, as to any remaining substantive issues, regardless of whether the issues were previously raised.” App. 176a-77a (emphasizing that “new arguable issues may be identified in the briefing.”); Cal. Gov’t Code § 68081 (authorizing supplemental briefing on issues not previously addressed). Both parties submitted substantial briefing arguing whether the *Nollan/Dolan* test operates differently when applied to class-based exactions, and if so, whether such an exaction must be tailored to the same degree of specificity as an ad hoc exaction.

The Court of Appeal again upheld the \$23,420 traffic impact fee. Addressing the predicate taking inquiry, the court concluded that “there is a ‘direct link’ between the County’s demand that Sheetz make a monetary payment to improve public roadways and a specific parcel of real property (Sheetz’s residential parcel).” App. 22a. Thus, “the challenged permit condition (TIM fee) is subject to the heightened scrutiny of *Nollan* and *Dolan*.” App. 22a.

But having correctly stated this Court’s holding, the lower court did not follow it.⁸ According to the lower court, “a finding that the same constitutional rules apply” does not mean that legislative exactions are subject to the same proportionality analysis as adjudicative exactions. App. 46a (there is “nothing inherent in the standards articulated in *Nollan* and *Dolan*” requiring the same analysis). The court posited that *Dolan* “logically requires” a broader analysis that focuses on the *reasonableness* of the legislation, “rather than the impact of specific parcels of property.” App. 46a-47a. Accordingly, rather than *tailoring* the proportionality test to evaluate the traffic impact of the development or of the class to which it belongs, the lower court relied on *Ehrlich* and applied the same “reasonable relationship” test it used to uphold the fee in its vacated 2022 opinion. App. 53a-55a (citing *Ehrlich*, 12 Cal. 4th at 860); App. 50a (*Ehrlich* “equat[es] California’s reasonable relationship test with *Nollan/Dolan* scrutiny”).

Because the state’s “reasonable relationship” inquiry provides “substantial judicial deference” to the challenged government decision, *Sheetz*, 84 Cal. App. 5th at 416, the court required the government to show only (1) that the exaction is theoretically or plausibly related to the governmental ends, and (2) that the government developed its fee schedule according to a rational legislative process that included the consideration of traffic studies and population projections. App. 53a-55a. The court below confirmed that the County’s fee program

⁸ *Cf. Alexander v. S.C. State Conf. of the NAACP*, 602 U.S. 1, 7 (2024) (reversing court that “paid only lip service” to the “appropriate legal standard,” thus “infect[ing] . . . the findings of fact.”).

required residential development to pay for 84% of the total projected traffic mitigation costs while holding commercial development responsible for only 16%—despite the County’s own traffic studies showing that residential development caused 60% of projected traffic increases while commercial development caused the remaining 40%. App. 62a & n.14. The additional burden imposed on residential development did not factor into the court’s analysis because the “reasonable relationship” test required only that the government show *how* it determined a “rational connection” between the fee and burdened development. App. 58a-59a.

The court rejected Sheetz’s unconstitutional conditions claim because (1) “the challenged permit condition (TIM fee) *substantially advances* the County’s legitimate government interest in reducing traffic congestion generated by new development;” App. 33a (emphasis added); and (2) “the County met its initial burden to demonstrate that it used a valid method for imposing the TIM fee.” App. 58a. The court acknowledged that the Fee Program made “new residential development responsible for a large share of the increased traffic from new development, including a substantial portion of the traffic impacts attributable to new nonresidential (e.g., commercial) development.” App. 62a. Yet the court approved the County’s massive reallocation of commercial mitigation costs because the process it employed to do so was rational.

The Court of Appeal certified its opinion for publication under California Rule of Court 8.1105(c) that directs the appellate courts to publish decisions that define, develop, or shape the law. No one submitted a request to depublish. Cal. R. Ct. 8.1125.

Sheetz preserved all issues for further appeal by petitioning the panel to rehear the case, Cal. R. Ct. 8.500(c)(2), which the court denied. App. 149a.

4. Sheetz petitioned the California Supreme Court to review the appellate court's remand decision. Despite the acknowledged need to determine whether the "reasonable relationship" can continue to be applied in an exactions case, *CBIA*, 61 Cal. 4th at 473 n.18, 485, the court denied review. App. 150a. Then, acting on its own motion, the Court summarily ordered the appellate decision to be depublished. *Ibid*.

Sheetz timely petitioned this Court for a writ of certiorari.

REASONS FOR GRANTING THE PETITION

I. The Decision Below Presents Unsettled Questions of Constitutional Law that Only This Court Can Resolve

The "reasonable relationship" test is clearly not the same as the rough proportionality test. The rough proportionality test calls for heightened scrutiny and places the burden on the government to demonstrate that the amount of land or money exacted by the permit condition sufficiently reflects the "nature and extent" of a proposed project's contribution to the problem. *Dolan*, 512 U.S. at 389, 391 & n.8. That burden cannot be satisfied by "generalized statements as to the necessary connection between the required dedication and the proposed development," which are "too lax to adequately protect petitioner's right to just compensation if her property is taken for a public purpose." *Id.* at 389. Instead, while "[n]o precise mathematical calculation" is required, the government "must make some effort to quantify its findings"

beyond mere “conclusory statements” that the exaction “could offset” development impacts. *Id.* at 391, 395-96.

The “reasonable relationship” test, by contrast, derives from the “substantially advances” standard rejected in *Lingle*, 544 U.S. at 540, and is “closer to the rational basis review of the equal protection clause than the heightened scrutiny of *Nollan* and *Dolan*.” *San Remo Hotel*, 27 Cal. 4th at 667; *see also CBIA*, 61 Cal. 4th at 486 (Werdeger, J., concurring) (“*San Remo Hotel*’s reasonable relationship test does not focus on the absolute or relative burden of a mitigation fee, but on whether it is reasonably justified by the legislative goal of mitigating development impacts.”). *Lingle* explained the different demands of the Takings Clause: “A test that tells us nothing about the actual burden imposed on property rights, or how that burden is allocated, cannot tell us when justice might require that the burden be spread among taxpayers through the payment of compensation.” 544 U.S. at 543.

A. Courts conflict as to whether government can prove rough proportionality by showing a legitimate function of legislative power or must provide factual evidence in the record

1. California’s “reasonable relationship” test calls for substantial deference that imposes only an initial burden on the government to demonstrate that it engaged in a rational legislative process. App. 53a-

55a.⁹ To satisfy that inquiry, the government must show only that the proposed development will have some impact on a government interest and that the government “used a *valid method* for imposing the fee in question.” App. 49a (citation omitted) (emphasis added); *see also* App. 54a (the test asks whether “that development contributes to the need for the facilities, and that its choices as to what will adequately accommodate the [new population] are reasonably based”) (citation omitted).

The inquiry focuses only on whether the government made some effort, regardless of whether the factual record demonstrates a proportional result. “[C]ourts do not concern themselves with the government’s methods of marshalling and evaluating scientific data.” App. 55a (quoting *Cresta Bella, LP v. Poway Unified Sch. Dist.*, 218 Cal. App. 4th 438, 447 (2013)) (citation modified). *Boatworks*, 35 Cal. App. 5th at 298, summed up the state courts’ approach:

In a challenge to development fees, the public agency bears the initial burden of producing evidence to show it used a valid method for imposing the fee in question. If it meets this burden, the plaintiff must establish that the fee is invalid, that is, that its use or the need for the public facility are not reasonably related to the development, or the amount of the fee bears no reasonable relationship to the cost of the public facility attributable to the development.

(citation omitted).

⁹ Yet “deference to a legislative assessment of reasonableness and necessity is not appropriate because the State’s self-interest is at stake.” *U.S. Trust Co. of N.Y. v. New Jersey*, 431 U.S. 1, 26 (1977).

Under this “reasonable relationship” test, “the required showing ‘need not be so close or so thoroughly established for legislatively imposed fees as for ad hoc fees.’” *Tanimura*, 34 Cal. App. 5th at 792, 801 (citing *San Remo Hotel*, 27 Cal. 4th at 669-71). Indeed, the state courts describe the test as a “generic enabler for an agency to proceed with a quasi-legislative determination.” *Id.* at 792. Thus, in this case, the lower court’s “reasonable relationship” test effectively ended its inquiry upon a bare, procedural showing that the County relied on a report discussing the relationship between “new residential population growth” and future commercial development.¹⁰ App. 63a, 186a-89a.

This deferential treatment of legislative exactions is not limited to California. The high courts of Arizona, Idaho, and Washington also hold impact fees subject to a reasonable relationship test that focuses on methodology over results. *City of Olympia v. Drebeck*, 156 Wash. 2d 289, 301-02 & n.4 (2006) (the state’s reasonable relationship test does not require class-based impact fees to “be *directly* or *specifically* related and beneficial to the development seeking approval”); *BHA Invs., Inc. v. State*, 138 Idaho 348, 355 (2003) (generally applicable monetary exactions must be “accorded substantial judicial deference” under the reasonable relationship test); *Home Builders Ass’n of Cent. Ariz. v. City of Scottsdale*, 187 Ariz. 479, 483 (1997) (under the state’s reasonable

¹⁰ The type of traffic studies conducted by the County are “unlikely . . . to meet any standard other than an exceptionally deferential one.” Kenneth Stahl and Kristina Currans, *The Trouble with Traffic Studies: Why Bad Traffic Predictions Are Making Our Cities Worse and What Courts Should Do About It*, 59 Real Prop. Tr. & Est. L.J. 325, 331 (2024).

relationship test, courts may only overturn general monetary exactions if “they are shown to be arbitrary and without factual justification”). The considerable deference of these reasonable relationship tests cannot be reconciled with *Dolan’s* placement of the burden on government to demonstrate the requisite proportionality.

Although this Court analogized to some cases that used versions of the “reasonable relationship” test, *Dolan* expressly did *not* adopt the “reasonable relationship” test because it was “confusingly similar” to “the minimal level of scrutiny” described as “rational basis” review.¹¹ 512 U.S. at 391. “Rough proportionality” requires “some sort of individualized determination” that a “reasonable relationship” does not. *Ibid.* Indeed, Justice Stevens observed that, at most, some of the “reasonable relationship” tests “lend support to the Court’s reaffirmance of *Nollan’s* reasonable nexus requirement.” *Id.* at 399 (Stevens, J., dissenting).

2. *Dolan* refused to give determinative significance to the government’s *procedure* for considering expert data (including traffic studies) when developing the permit conditions. There, acting pursuant to the City of Tigard’s development code, the city demanded that Dolan dedicate approximately ten percent of her land as a stream buffer and for a bicycle path as condition

¹¹ *Koontz* noted that “[n]umerous courts—including courts in many of our Nation’s most populous States—have confronted constitutional challenges to monetary exactions over the last two decades and applied the standard from *Nollan* and *Dolan* or something like it.” 570 U.S. at 618 (citing Ohio, Illinois, and Texas cases). This omission of California suggests that the state’s “reasonable relationship” test differs from those in Ohio, Illinois, and Texas.

on issuance of a permit to expand her plumbing and electrical supply store. *Dolan*, 512 U.S. at 377, 380. This Court held that, although the city established a nexus between both conditions and Dolan’s proposed expansion, the conditions nevertheless effected an unconstitutional taking because they lacked the required “degree of connection between the exactions and the projected impact of the proposed development.” *Id.* at 386.

This Court acknowledged that Tigard relied on valid studies showing the beneficial effects of such dedications to mitigate traffic and stormwater impacts when enacting its development code. But that was not enough. The rough proportionality test requires more because “generalized statements as to the necessary connection between the required dedication and the proposed development . . . [are] too lax to adequately protect petitioner’s right to just compensation if her property is taken for a public purpose.” *Id.* at 389. The bicycle path condition failed the proportionality test because the city determined only that the path *could* offset some of the increased traffic—it made no showing that the path *would* (or *was likely* to) do so. *Id.* at 395-96; (*cf.* AR 2090 (“[i]t *seems* that as population increases, local serving jobs can be expected to increase as well.”) (emphasis added)). Without proof of a causal connection, it is both unfair and unconstitutional to require a permit applicant to mitigate impacts of separate development (even when that separate development is encouraged by the project, as the City’s economic survey speculated). *Dolan*, 512 U.S. at 391; *cf.* *Seven Cnty. Infrastructure Coal. v. Eagle Cnty.*, 605 U.S. 168, 187-88 (2025) (NEPA case holding that an “attenuated” causal chain means “there is no ‘reasonably close

causal relationship' between the project at hand and the [impacts] of those other projects.”) (citations omitted).

3. *Dolan* does not prescribe any particular method or process, it requires an *outcome* of rough proportionality. The Ohio Supreme Court explained that while *Nollan*'s nexus prong assesses “methodology used to determine the need for roadway improvements funded by the impact fee,” this differs from *Dolan*'s proportionality prong that considers *facts*, not methodology; namely,

actual costs of constructing new roadways, the formula used to determine the fee, the fee paid by a particular developer, the city's contribution, road improvements made directly by developers, the length of time between the payment of the fee and new roadway construction projects, whether the roadway projects are site-specific to the new development, and any other criterion that bears on the reasonableness of the fee.

Homebuilders Ass'n of Dayton and the Miami Valley v. City of Beavercreek, 89 Ohio St. 3d 121, 129-30 (2000).

Some state and federal courts correctly look to record evidence to determine the constitutionality of legislatively mandated monetary exactions. For example, *B.A.M. Development, L.L.C. v. Salt Lake County*, 282 P.3d 41, 45-46 (Utah 2012), reviewed a Salt Lake City ordinance that required, as a condition on any new development, that owners dedicate property (or pay an in-lieu fee) to improve public streets abutting the proposed development. The Utah Supreme Court evaluated the county's evidence under *Nollan* and *Dolan* and upheld a legislatively

mandated traffic impact fee upon the government's evidentiary showing that the fee did not exceed that portion of a road-widening project that was attributable to the proposed development's increased traffic demands. *Ibid.*; see also *B.A.M. Dev., L.L.C. v. Salt Lake Cnty.*, 196 P.3d 601, 604 (Utah 2008) (the proper measure for proportionality identified the percentage of traffic impacts attributable to the proposal then measured the fee against the cost to mitigate that impact). Unlike the County's TIM Fee Program, Salt Lake's ordinance directed permitting officials to determine the size of the mandatory exaction based on a site-specific determination of traffic impacts. *B.A.M.*, 282 P.3d at 45-46. After evaluating the government's evidence in the record, the court held the exaction to be proportional. *Ibid.* Because the city empirically proved that its fee was proportional to the impacts caused by development, it had no reason to fear the court's application of *Nollan/Dolan* scrutiny, and the city constitutionally secured mitigation actually attributable to the project's impacts.

In *Mira Mar Development Corp. v. County of Coppel*, 421 S.W.3d 74, 97 (Tex. Ct. App. 2013), the court measured legislatively imposed construction inspection fees against "[t]he impact of the development," and not some other benchmark. And in *Keppel v. City of Sparks*, No. 89187, 2025 WL 1752002, at *2 (Nev. June 24, 2025), the Nevada Supreme Court held that rough proportionality is satisfied where the landowner is not forced to give up, or pay for, more than is necessary to mitigate the harm resulting from the project. Anticipating *Nollan/Dolan* review, these municipalities capably generated the necessary data

to ensure that its legislative exactions would satisfy the proportionality test.

Where factual data is lacking, courts may remand to scrutinize the evidence produced by the government or simply invalidate the exaction. In *Anderson Creek Partners, L.P. v. County of Harnett*, 382 N.C. 1, 37-38 (2022), the North Carolina Supreme Court held that development fees to mitigate the cost of expanding water and sewer systems may be imposed on new development only “to the extent that they are ‘roughly proportional’ to the impact of the proposed developments.” The court remanded for a determination of whether the county’s schedule of “capacity use” fees “reflect[s] the impact of plaintiffs’ proposed developments upon the County’s water and sewer systems.” *Id.* at 40. *See also Empire Contractors, Inc. v. Town of Apex*, 923 S.E.2d 516, 522 (N.C. 2025) (“rough proportionality” challenge to fees presented individualized fact issues that defeated predominance prong of class certification).

Of course, not all exactions survive such heightened scrutiny. *See KOGAP Ent., Inc. v. City of Medford*, No. 24-5268, 2025 WL 3172310, at *1 (9th Cir. Nov. 13, 2025) (traffic mitigation fee held unconstitutional where “the record does not contain a basis upon which the district court could have held that the City demonstrated rough proportionality between the project’s expected impacts and the exaction imposed”); *F.P. Dev., LLC v. Charter Twp. of Canton*, 16 F.4th 198, 206 (6th Cir. 2021) (tree impact fee was unconstitutional where the township “fail[ed] to carry its burden to show that” “the required dedication is related both in nature and extent to the impact of the proposed development”); *Goss v. City of Little Rock*, 151 F.3d 861, 863 (8th Cir. 1998)

(invalidating a legislative traffic mitigation condition where the size of the demand was based on the city’s “speculative” assumptions about the impacts of “conceivably” future neighboring development, rather than an individualized assessment of the proposed development’s impacts); *Charter Twp. of Canton v. 44650, Inc.*, 346 Mich. App. 290, 327-28 (2023) (invalidating legislatively mandated \$446,625 tree replacement fee because the township’s tree ordinance “requires preset mitigation” without any “evidence that this required mitigation bears any relationship to the impact of defendant’s tree removal” and proportionality requires an “individualized assessment” of the land-use impacts.).

4. *Nollan* and *Dolan* do not simply ask whether an exaction advances a particular government goal. They include an important causation element that requires the government to show that the regulated property use directly causes the problem an exaction addresses and, if so, that the exaction is proportionate to that impact. *Koontz*, 570 U.S. at 606.

This does not create an unusually burdensome requirement. Courts regularly engage in evidence-based assessment of proportionality in other contexts that involve multiple causes and effects. For example, *Colorado-Wyoming Gas Co. v. Federal Power Commission*, 324 U.S. 626, 632 (1945), held that an ambiguous record could not support the government’s supposedly proportional allocation of natural gas to determine appropriate rates. In *United States v. Bajakajian*, 524 U.S. 321, 335 (1998), this Court emphasized the “centrality of proportionality” in Excessive Fines cases. In those cases, “gross disproportionality” is the opposite of “rough proportionality”—neither requires a strict calculation and

both are ascertainable only upon a factual record. *Id.* at 336 & n.10 (“whether a fine is constitutionally excessive calls for the application of a constitutional standard to the facts of a particular case”). And in *United States v. Reliable Transfer Co.*, 421 U.S. 397, 407 (1975), this Court replaced a rule of “divided damages” equally assessed on multiple causers of maritime harm with proportional liability for damages. The Court recognized “the difficulty of determining comparative degrees of negligence” but held that “[p]otential problems of proof in some cases hardly require adherence to an archaic and unfair rule in all cases.” *Ibid.* (also noting equivalent rule “with no untoward difficulties in personal injury actions”).

B. Courts conflict on whether and how to analyze proportionality between *classes* of development

This Court has yet to decide whether “a permit condition imposed on a class of properties must be *tailored* with the same degree of specificity as a permit condition that targets a particular development.” *Sheetz*, 601 U.S. at 280 (emphasis added). To *tailor* something means “to make or adapt to suit a special need or purpose”—not to replace it. *Tailor*, Merriam-Webster Dict.¹² This tailoring language confirms that the proportionality requirement—in some form—applies to legislative exactions while leaving open the question whether an impact fee can be roughly proportional when imposed on one discrete class of development (residential) for the purpose of

¹² <https://www.merriam-webster.com/dictionary/tailor> (visited Jan. 7, 2025).

addressing impacts caused by another discrete class of development (commercial).

California's "reasonable relationship" standard never considers the outcome of legislative exactions. Instead, it focuses solely on whether the local government engaged in a rational process when developing the legislation that mandated the exaction. App. 53a-55a; 58a-59a; 62a-63a & n.14 (approving County's "rational" decision to reallocate of hundreds of millions of dollars in commercial traffic impact mitigation costs onto new residential development). Such "free rein . . . creates the risk that the government will abuse its power by attaching strings strategically, striking lopsided deals and gradually eroding constitutional protections." *United States v. Scott*, 450 F.3d 863, 866 (9th Cir. 2006).

Any standard that requires "reasonable formulas or schedules that assess the impact of classes of development," as Justice Kavanaugh phrased it, *Sheetz*, 601 U.S. at 284 (Kavanaugh, J., concurring), "requires a definable causal relationship between the new development and the impact to be mitigated. Here, judicial deference to rational choices made by the legislative branch on a macro level may have its limits." Karl E. Geier, *Sheetz v. El Dorado County: Death Knell for Development Fee Programs or Harbinger of Judicial Deference?*, 35 *Miller & Starr Cal. Real Est. Newsalert* 1, 17 (2024). In short, the legislature may broadly designate fees that apply to different classes of property, but *Dolan* still requires a burden on the government or an opportunity for the applicant to show that a particular parcel doesn't fit the class to which it has been assigned. *See Puce v. City of Burnsville*, 997 N.W.2d 49, 59-60 (Minn. 2023) (park fees may be imposed legislatively against a class

of properties based on a percentage-based formula, if that formula is applied in a manner reflecting the individual impacts of a given development).

A taking cannot be prevented by a process alone. The existence and extent of a taking depend on the facts of each case—how much acreage is condemned; how much equity is lost after a tax foreclosure; how much money is taken beyond impacts caused by the development. The County’s fee schedule in this case shifted known commercial impacts to be paid by a residential developer. This necessarily exceeds the residential developer’s fair share and *Dolan*’s rough proportionality requirement.

C. California improperly shifts the burden of proof to property owners

“In all kinds of litigation it is plain that where the burden of proof lies may be decisive of the outcome.” *Speiser v. Randall*, 357 U.S. 513, 525 (1958); *Addington v. Texas*, 441 U.S. 418, 423 (1979) (The burden of proof “allocate[s] the risk of error between the litigants” and, in so doing, “indicate[s] the relative importance attached to the ultimate decision.”). In unconstitutional conditions cases involving exactions, the government bears the burden of proving that its demand of money or land is roughly proportional to the impacts caused by the proposed development. Thus, in *Dolan*, the Court reviewed the evidence and held, “*on the record before us*, the city has not met its burden of demonstrating that the additional number of vehicle and bicycle trips generated by petitioner’s development reasonably relate to the city’s requirement for a dedication of the pedestrian/bicycle pathway easement.” 512 U.S. at 395 (emphasis added); *see also id.* at 398 (Stevens, J., dissenting) (“the city has

the burden of establishing the constitutionality of its conditions by making an ‘individualized determination’ that the condition in question satisfies the proportionality requirement”); *id.* at 413 (Souter, J., dissenting) (same).

A conclusory statement of need cannot suffice. By focusing on whether the exaction “would” mitigate a known impact or merely “could,” this Court emphasized that the government had to demonstrate a beneficial result rather than merely speculate as to one. See *Diamond Alt. Energy, LLC v. Env’t Prot. Agency*, 606 U.S. 100, 112, 121 (2025) (“Courts must distinguish the ‘predictable’ from the ‘speculative’ effects of government action” to avoid “incentives for gamesmanship”); *FERC v. Martin Exploration Mgmt. Co.*, 486 U.S. 204, 209-10 (1988) (rejecting appellate court’s transforming the “conditional meaning of ‘could’” to mean “will”); *In re Fin. Oversight and Mgmt. Bd. for Puerto Rico*, 77 F.4th 49, 64 (1st Cir. 2023) (“could” denotes estimation of “speculative, secondary or tertiary effects”).

Following that direction, the Wisconsin Court of Appeals invalidated an exaction when the city failed to meet its burden of proof. *Fassett v. City of Brookfield*, 402 Wis. 2d 265, 277-78 (Wis. App. 2022). The court explained, “[t]he City’s desire to improve current conditions for the public’s benefit, while laudable, is not sufficient to shift the cost of eliminating the dead ends to Fassett.” *Id.* at 280. “[T]o require that Fassett dedicate her land and build a street without compensation, the City must show that the conditions it imposed are roughly proportional to offset the costs of those impacts, which the municipality would otherwise bear.” *Ibid.* Cf. *Grogan v. Zoning Bd. of Appeals*, 633 N.Y.S.2d 809, 810-11,

(App. Div. 1995) (“Upon *reviewing the evidence*, we are satisfied that the respondent has rendered a valid, individualized determination that the easement is an appropriate measure to address the specific environmental impacts of the petitioners’ proposal.”) (emphasis added).

But in California, once the government shows that it engaged in a rational legislative process, courts shift the burden of proof to the property owner to prove either that “the fee’s use and the need for the public facility are not reasonably related to the [class of] development project on which the fee is imposed” or that “the amount of the fee bears no reasonable relationship to the cost of the public facility attributable to the [class of] development.” App. 55a (citation omitted); *Perris v. Stamper*, 1 Cal. 5th 576, 595 (2016) (evaluating government’s “sincere and reasoned planning decisions”). Under this approach, a property owner must convince a court that the government clearly erred when developing the fee program, and the court may not consider the actual information the government used to develop the exaction—let alone any of the conclusions that the government extrapolates from the data. *Ibid.*

Government’s public purposes—its *ends*—may lawfully encompass innumerable real or supposed public benefits. The presumption of constitutional validity becomes very dangerous to private property rights protected by the Takings Clause if the presumption of constitutionality is viewed as vindicating governmental *means*. Bruce W. Burton, *Predatory Municipal Zoning Practices: Changing the Presumption of Constitutionality in the “Takings Trilogy”*, 44 Ark. L. Rev. 65, 105 (1991); *Koontz*, 570 U.S. at 605 (land use applicants remain “especially

vulnerable” to “[e]xtortionate demands” from government officials). By focusing on the procedure by which the amount of the fee is set, instead of the impediments imposed on the exercise of the constitutional right, California courts fail to recognize the constitutional requirement that the effect of the fee must, *in all cases*, offset some adverse consequences of the proposed project. “Legislative fiat may not take the place of fact in the judicial determination of issues involving life, liberty, or property.” *W. & A.R.R. v. Henderson*, 279 U.S. 639, 642 (1929).

II. This Case Presents a Clean Vehicle for the Court to Address an Issue of Nationwide Importance

This case squarely and cleanly presents the question whether the *Nollan/Dolan* test operates differently when applied to legislatively mandated class-based exactions. There are no threshold or jurisdictional questions that would frustrate this Court’s ability to determine the constitutionality of the exaction in a specific, nonabstract setting.

The California Supreme Court’s decision to depublish the appellate opinion does not weigh against granting the petition. *Comm’r v. McCoy*, 484 U.S. 3, 7 (1987); *see also Smith v. United States*, 502 U.S. 1017, 1020 n.* (1991) (Blackmun, J., dissenting) (lower courts should not be able to use unpublished decisions as “a convenient means to prevent review.”). Indeed, this Court regularly grants certiorari to review unpublished decisions of state and federal courts. *See Viking River Cruises, Inc. v. Moriana*, 596 U.S. 639, 663 (2022) (reversing unpublished decision of the California Court of Appeal); *Lange v. California*, 594 U.S. 295, 314 (2021) (same). For good reason:

unpublished decisions risk creating a body of “secret law” that results in “decisionmaking without the discipline and accountability that the preparation of [published] opinions requires.” *Kling*, 474 U.S. at 938, 940 (Brennan, J., dissenting). In California, at least one other court already relied on the unpublished *Sheetz* opinion to hold legislative exactions subject to the “reasonable relationship” test in yet another unpublished opinion. *Diego v. City of San Diego*, No. D084333, 2025 WL 2887089, at *8 n.12 (Cal. Ct. App. Oct. 10, 2025). And judges of New York’s highest court disagree over the persuasive value of the decision below. *Coalition for Fairness*, 2026 WL 88133, at *16, n.2 (Garcia, J., dissenting) (criticizing majority opinion’s refusal to consider it).

Neither does the Court of Appeal’s incorrect statement that *Sheetz* “forfeited” his arguments on the merits of the proportionality test hinder this Court’s ability to review the questions presented. App. 59a-60a. First, the court nonetheless addressed *Sheetz*’s burden-shifting argument. App. 62a-63a & n.14. Moreover, forfeiture cannot apply to a claim that was dismissed on the pleadings and is later reinstated for a determination on the merits. *Gutierrez v. Carmax Auto Superstores Cal.*, 19 Cal. App. 5th 1234, 1244-45 (2018).

The parties’ first opportunity to argue the *merits* of *Sheetz*’s unconstitutional conditions claim was on remand to the California courts. *Sheetz*, 601 U.S. at 280. There, the Court of Appeal issued an order that “the sole issue remaining unresolved in this case” was whether the traffic impact fee was “an unlawful ‘exaction’ of money in violation of the takings clause of the Fifth Amendment of the United States Constitution.” App. 171-72a. That question required a

determination “in the first instance” because the trial court dismissed the claim “as a matter of law” and, therefore, “failed to apply the *Nollan/Dolan* test to the fee at issue here.” App. 172a-174a.

The Court of Appeal ordered Sheetz to file a “supplemental opening brief, as to any remaining substantive issues, regardless of whether the issues were previously raised” and specifically directing that “new arguable issues may be identified in the briefing.” App. 176a-77a. Both parties submitted briefing applying the nexus and proportionality tests to the record—arguments that neither party had an opportunity to present in the prior proceedings. The issues of how to define and apply the rough proportionality test are squarely before this Court.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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FEBRUARY 2026