Yee v. City of Escondido

Supreme Court of the United States

January 22, 1992, Argued ; April 1, 1992, Decided

No. 90-1947

Reporter
503 U.S. 519 *; 112 S. Ct. 1522 **; 118 L. Ed. 2d 153 ***; 1992 U.S. LEXIS 2115 ****; 60 U.S.L.W. 4301; 92 Cal. Daily Op. Service 2757; 92 Daily Journal DAR 4358; 6 Fla. L. Weekly Fed. S 158

JOHN K. YEE, ET AL., PETITIONERS v. CITY OF ESCONDIDO, CALIFORNIA

Prior History: [****1] ON WRIT OF CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT.

Disposition: *224 Cal. App. 3d 1349, 274 Cal. Rptr. 551*, affirmed.

Core Terms

mobile home, rent, ordinance, tenants, regulation, regulatory taking, petitioners', Mobilehome, rent control ordinance, park owner, physical occupation, cases, Residency Law, physical taking, questions, rent control, landowner, landlord, effects, pad, mobile home park, state court, wealth, due process claim, authorizes, purchaser, premium, courts, occupy, petition for certiorari

Case Summary

Procedural Posture
Petitioner mobile home park owners sought review of a judgment from the Court of Appeal of California, Fourth Appellate District, which held that a mobile home rent control ordinance of respondent city did not effect a physical taking of their property. The park owners alleged that the decision was in conflict with the decisions of two federal circuit courts of appeals, which had held that similar ordinances did effect unconstitutional takings.

Overview

The park owners challenged the city's mobile home rent control ordinance in state court. They alleged that the ordinance, read in conjunction with California's Mobilehome Residency Law, *Cal. Civ. Code Ann. § 798*, amounted to a physical occupation of their property. The effect of the two laws was to transfer wealth from the park owners to incumbent mobile home owners, who could command premium prices when they sold their mobile homes. The Third and Ninth Circuits had held that similar ordinances effected unconstitutional physical takings. The California trial and appellate courts held that the city's ordinance did not. The California Supreme Court denied review, and the Court granted certiorari because of the conflict. The Court held that because the ordinance did not compel the park owners to suffer the physical occupation of their property, it did not effect a per se, physical taking. The Court refused to consider the park owners' arguments that the ordinance denied them substantive due process, because it was not argued below, and that the ordinance constituted a regulatory taking, because it was not the precise question on which the Court granted certiorari.

Outcome
The Court affirmed the judgment of the state court of appeal, holding that no physical taking of the owners' property had occurred.

LexisNexis® Headnotes

Constitutional Law > Bill of Rights > Fundamental Rights > Eminent Domain & Takings

Real Property Law > Inverse Condemnation > Regulatory Takings

Real Property Law > Inverse Condemnation > Remedies

HN1[] **Fundamental Rights, Eminent Domain & Takings**

The *Takings Clause of the Fifth Amendment*, *U.S. Const. amend. V*, provides: Nor shall private property be taken for public use, without just compensation. Most cases interpreting the clause fall within two distinct classes. Where the government authorizes a physical occupation of property (or actually takes title), the *Takings Clause* generally requires compensation. But where the government merely regulates the use of property, compensation is required only if considerations such as the purpose of the regulation or the extent to which it deprives the owner of the economic use of the property suggest that the regulation has unfairly singled out the property owner to bear a burden that should be borne by the public as a whole. The first category of cases requires courts to apply a clear rule; the second necessarily entails complex factual assessments of the purposes and economic effects of government actions.

Constitutional Law > Bill of Rights > Fundamental Rights > Eminent Domain & Takings

Real Property Law > Landlord & Tenant > Rent Regulation > General Overview

Real Property Law > Inverse Condemnation > General Overview

Real Property Law > Inverse Condemnation > Regulatory Takings

HN2[] **Fundamental Rights, Eminent Domain & Takings**

The government effects a physical taking only where it requires the landowner to submit to the physical occupation of his land. This element of required acquiescence is at the heart of the concept of occupation. Thus whether the government floods a landowner's property or does no more than require the landowner to suffer the installation of a cable, the *Fifth Amendment Takings Clause, U.S. Const. amend. V*, requires compensation if the government authorizes a compelled physical invasion of property.

Constitutional Law > Substantive Due Process > Scope

HN3[] **Constitutional Law, Substantive Due Process**

The right to exclude is doubtless one of the most essential sticks in the bundle of rights that are commonly characterized as property.

Real Property Law > Inverse Condemnation > Regulatory Takings

Torts > Premises & Property Liability > Lessees & Lessors > General Overview

Constitutional Law > Bill of Rights > Fundamental Rights > Eminent Domain & Takings

Real Property Law > Inverse Condemnation > Remedies

Real Property Law > Landlord & Tenant > Rent Regulation > General Overview

HN4[] **Inverse Condemnation, Regulatory Takings**

States have broad power to regulate housing conditions in general and the landlord-tenant relationship in particular without paying compensation for all economic injuries that such regulation entails. When a landowner

decides to rent his land to tenants, the government may place ceilings on the rents the landowner can charge, or require the landowner to accept tenants he does not like, without automatically having to pay compensation. Such forms of regulation are analyzed by engaging in the essentially ad hoc, factual inquiries necessary to determine whether a regulatory taking has occurred. While property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking.

Energy & Utilities Law > Oil, Gas & Mineral Interests > General Overview

Real Property Law > Mobilehomes & Mobilehome Parks > Maintenance & Use Issues

Constitutional Law > Bill of Rights > Fundamental Rights > Eminent Domain & Takings

Energy & Utilities Law > Mining Industry > Coal Mining > General Overview

Real Property Law > Landlord & Tenant > Rent Regulation > General Overview

Business & Corporate Compliance > ... > Real Property Law > Mining > Regulations

Real Property Law > Mobilehomes & Mobilehome Parks > General Overview

HN5 **Energy & Utilities Law, Oil, Gas & Mineral Interests**

A mobile home rent control ordinance transfers wealth from park owners to incumbent mobile home owners. Other forms of land use regulation, however, can also be said to transfer wealth from the one who is regulated to another. The mobile home owner's ability to sell the mobile home at a premium may make this wealth transfer more visible than in the ordinary case, but the existence of the transfer in itself does not convert regulation into physical invasion.

Real Property Law > Mobilehomes & Mobilehome Parks > General Overview

Constitutional Law > Bill of Rights > Fundamental Rights > Eminent Domain & Takings

Real Property Law > Inverse Condemnation > Regulatory Takings

Real Property Law > Landlord & Tenant > Rent Regulation > General Overview

HN6 **Real Property Law, Mobilehomes & Mobilehome Parks**

The fact that a mobile home rent control ordinance benefits incumbent mobile home owners without benefiting future mobile home owners has nothing to do with whether the ordinance causes a physical taking. Whether the ordinance benefits only current mobile home owners or all mobile home owners, it does not require mobile home park owners to submit to the physical occupation of their land.

Constitutional Law > Bill of Rights > Fundamental Rights > Eminent Domain & Takings

Real Property Law > Mobilehomes & Mobilehome Parks > General Overview

Real Property Law > Landlord & Tenant > Rent Regulation > General Overview

Real Property Law > Landlord & Tenant > Rent Regulation > Rent Control Statutes

HN7 **Fundamental Rights, Eminent Domain & Takings**

The fact that a mobile home rent control ordinance deprives park owners of the ability to choose their incoming tenants does not convert regulation into the unwanted physical occupation of land. Because they voluntarily open their property to occupation by others, park owners cannot assert a per se right to compensation based on their inability to exclude particular individuals.

Constitutional Law > Bill of Rights > Fundamental Rights > Eminent Domain & Takings

Real Property Law > Landlord & Tenant > Rent Regulation > General Overview

HN8 **Fundamental Rights, Eminent Domain & Takings**

A landlord's ability to rent his property may not be conditioned on his forfeiting the right to compensation for a physical occupation.

Real Property Law > Mobilehomes & Mobilehome Parks > Maintenance & Use Issues

Constitutional Law > Bill of Rights > Fundamental Rights > Eminent Domain & Takings

Real Property Law > Inverse Condemnation > Constitutional Issues

Real Property Law > Inverse Condemnation > Regulatory Takings

Real Property Law > Landlord & Tenant > Rent Regulation > General Overview

Real Property Law > Landlord & Tenant > Rent Regulation > Rent Control Statutes

Real Property Law > Mobilehomes & Mobilehome Parks > General Overview

HN9[] Mobilehomes & Mobilehome Parks, Maintenance & Use Issues

A mobile home rent control ordinance, even considered against the backdrop of California's Mobilehome Residency Law, does not authorize an unwanted physical occupation of mobile home park owners' property. It is a regulation of the park owners' use of their property, and thus does not amount to a per se taking.

Civil Procedure > Appeals > Reviewability of Lower Court Decisions > Preservation for Review

Constitutional Law > Substantive Due Process > Scope

Civil Procedure > ... > Jurisdiction on Certiorari > Considerations Governing Review > State Court Decisions

HN10[] Reviewability of Lower Court Decisions, Preservation for Review

In reviewing the judgments of state courts under the jurisdictional grant of 28 U.S.C.S. § 1257, the Supreme Court has, with very rare exceptions, refused to consider petitioners' claims that were not raised or addressed below. While it has expressed inconsistent views as to whether this rule is jurisdictional or prudential in cases arising from state courts, in cases arising from federal courts, the rule is prudential only. Adhering to the general rule, where petitioners have not raised their substantive due process claim below, and the state courts have therefore not addressed it, the Supreme Court will not consider it.

Constitutional Law > The Judiciary > Case or Controversy > Ripeness

Real Property Law > Landlord & Tenant > Rent Regulation > General Overview

Constitutional Law > Bill of Rights > Fundamental Rights > Eminent Domain & Takings

Real Property Law > Inverse Condemnation > Regulatory Takings

HN11[] Case or Controversy, Ripeness

While a claim that a mobile home rent control ordinance effects a regulatory taking as applied to a certain property is unripe where the owners have not sought rent increases, the owners may mount a facial challenge to the ordinance, alleging that the ordinance does not substantially advance a legitimate state interest no matter how it is applied. As this allegation does not depend on the extent to which the owners are deprived of the economic use of their particular pieces of property or the extent to which the particular owners are compensated, such a facial challenge is ripe.

Civil Procedure > ... > Jurisdiction on Certiorari > Considerations Governing Review > State Court Decisions

Real Property Law > Landlord & Tenant > Rent Regulation > General Overview

Constitutional Law > Bill of Rights > Fundamental Rights > Eminent Domain & Takings

Real Property Law > Inverse Condemnation > General Overview

Real Property Law > Inverse Condemnation > Regulatory Takings

HN12[] Considerations Governing Review, State Court Decisions

Once a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below. Arguments that a rent control ordinance constitutes a taking in two different ways, by physical occupation and by regulation, are not separate claims. They are, rather, separate arguments in support of a single claim -- that the ordinance effects an unconstitutional taking. Having raised a taking claim in the state courts, therefore, the owners can formulate any argument they like in support of that claim before the Supreme Court.

Civil Procedure > ... > Jurisdiction on Certiorari > Considerations Governing Review > State Court Decisions

HN13[] Considerations Governing Review, State Court Decisions

A litigant seeking review in the Supreme Court of a claim properly raised in the lower courts generally possesses the ability to frame the question to be decided in any way he chooses, without being limited to the manner in which the question was framed below. While the Supreme Court has on occasion rephrased the question presented by a petitioner, or requested the parties to address an important question of law not raised in the petition for certiorari, by and large it is the petitioner himself who controls the scope of the question presented. The petitioner can generally frame the question as broadly or as narrowly as he sees fit.

Civil Procedure > ... > Jurisdiction on Certiorari > Considerations Governing Review > State Court Decisions

Governments > Courts > Rule Application & Interpretation

HN14[] Considerations Governing Review, State Court Decisions

The framing of the question presented has significant consequences, because under Sup. Ct. R. 14.1(a), only the questions set forth in the petition, or fairly included therein, will be considered by the Supreme Court. While the statement of any question presented will be deemed to comprise every subsidiary question fairly included therein, the Court ordinarily does not consider questions outside those presented in the petition for certiorari. This rule is prudential in nature, but the Court disregards it only in the most exceptional cases, where reasons of urgency or of economy suggest the need to address the unpresented question in the case under consideration.

Civil Procedure > ... > Jurisdiction on Certiorari > Considerations Governing Review > State Court Decisions

HN15[] Considerations Governing Review, State Court Decisions

Sup. Ct. R. 14.1(a) serves two important and related purposes. First, it provides the respondent with notice of the grounds upon which the petitioner is seeking certiorari, and enables the respondent to sharpen the arguments as to why certiorari should not be granted. Second, Rule 14.1(a) assists the Supreme Court in selecting the cases in which certiorari will be granted.

Constitutional Law > Bill of Rights > Fundamental Rights > Eminent Domain & Takings

HN16[] Fundamental Rights, Eminent Domain & Takings

Whether or not an ordinance effects a regulatory taking is a question related to the question of whether the ordinance effects a physical taking, and perhaps complementary to that question, but it is not fairly included therein. Consideration of whether a regulatory taking occurred would not assist in resolving whether a physical taking occurred as well; neither of the two questions is subsidiary to the other. Both might be subsidiary to a question embracing both -- Was there a taking? -- but they exist side by side, neither encompassing the other.

Civil Procedure > ... > Jurisdiction on Certiorari > Considerations Governing Review > State Court Decisions

Real Property Law > Landlord & Tenant > Rent

Regulation > General Overview

Civil Procedure > Appeals > Appellate Jurisdiction > State Court Review

Constitutional Law > Bill of Rights > Fundamental Rights > Eminent Domain & Takings

Real Property Law > Inverse Condemnation > General Overview

Real Property Law > Inverse Condemnation > Regulatory Takings

Real Property Law > Mobilehomes & Mobilehome Parks > General Overview

HN17 **Considerations Governing Review, State Court Decisions**

Where lower courts have reached conflicting results over whether mobile home rent control ordinances cause physical takings; such a conflict is, of course, a substantial reason for granting certiorari under Sup. Ct. R. 10. Moreover, the conflict is between 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. Forum shopping is thus of particular concern.

Civil Procedure > ... > Jurisdiction on Certiorari > Considerations Governing Review > State Court Decisions

HN18 **Considerations Governing Review, State Court Decisions**

Prudence dictates awaiting a case in which the issue was fully litigated below, so that the Supreme Court will have the benefit of developed arguments on both sides and lower court opinions squarely addressing the question.

Business & Corporate Compliance > ... > Real Property Law > Zoning > Constitutional Limits

Constitutional Law > Bill of Rights > Fundamental Rights > Eminent Domain & Takings

Real Property Law > Inverse Condemnation > Regulatory Takings

HN19 **Zoning, Constitutional Limits**

The traditional rule is that a permanent physical occupation of property is a taking. In such a case, the property owner entertains a historically rooted expectation of compensation, and the character of the invasion is qualitatively more intrusive than perhaps any other category of property regulation. This is a narrow holding and does not question the equally substantial authority upholding a state's broad power to impose appropriate restrictions upon an owner's use of his property.

Constitutional Law > Bill of Rights > Fundamental Rights > Eminent Domain & Takings

Contracts Law > Types of Contracts > Lease Agreements > General Overview

Real Property Law > Landlord & Tenant > Rent Regulation > General Overview

HN20 **Fundamental Rights, Eminent Domain & Takings**

No physical taking occurs when a tenant invited to lease at one rent remains at a lower regulated rent.

Constitutional Law > Bill of Rights > Fundamental Rights > Eminent Domain & Takings

Real Property Law > Mobilehomes & Mobilehome Parks > General Overview

Real Property Law > Landlord & Tenant > Rent Regulation > General Overview

HN21 **Fundamental Rights, Eminent Domain & Takings**

Where a mobile home rent control ordinance does not compel a landowner to suffer the physical occupation of his property, it does not effect a per se taking.

Lawyers' Edition Display

Decision

Mobile home rent control ordinance, viewed in context of California statute restricting termination of mobile home park tenancy, held not to constitute physical "taking" under *Fifth Amendment*.

Summary

California's mobile home residency law (MRL) (1) limited the bases on which a mobile home park owner could terminate a mobile home owner's rental of space in the park; (2) generally prohibited park owners from requiring the removal of a mobile home when it was sold; (3) prohibited park owners from charging transfer fees for such sales; and (4) prohibited park owners from disapproving of a purchaser who was able to pay the rent. Following enactment of the MRL, a California city enacted a mobile home rent control ordinance which set back existing rents to the level of 2 years earlier and required park owners to obtain the approval of the city council for any rent increases. The owners of two mobile home parks in the city filed suit against the city in the Superior Court of San Diego County, California, which suit(1) contended that the combined effect of the rent control ordinance and the MRL amounted to a "taking" of property by permanent physical occupation, for which just compensation was required under the *Federal Constitution's Fifth Amendment*, because the state law generally required park owners to accept the purchaser of a mobile home as a new tenant, and, as a result, existing tenants had been able to monetize the value of living in a rent-controlled jurisdiction by raising the price of used mobile homes, transferring to the tenants a discrete interest in land--the right to occupy the land indefinitely at sub-market rent--which amounted to a right of physical occupation; and (2) sought damages and declaratory and injunctive relief. The Superior Court sustained the city's demurrer and dismissed the park owners' complaint; and the California Court of Appeal, Fourth District, affirmed (*224 Cal App 3d 1349, 274 Cal Rptr 551*). After the Supreme Court of California denied discretionary review, the park owners petitioned the United States Supreme Court for certiorari, which the Supreme Court granted only as to the question whether the Court of Appeal had erred in disagreeing with decisions of two Federal Courts of Appeals, which decisions had held that similar mobile home rent control ordinances effected physical takings of property for purposes of the *Fifth Amendment*.

On certiorari, the United States Supreme Court affirmed. In an opinion by O'Connor, J., joined by Rehnquist, Ch. J., and White, Stevens, Scalia, Kennedy, and Thomas, JJ., it was held that (1) the rent control ordinance, even when considered in conjunction with the MRL, did not authorize a per se "taking" of the park owners' property by compelled physical occupation, because (a) the park owners had voluntarily rented their land to mobile home owners and were not compelled to continue doing so, (b) the ordinance and MRL, on their face, merely regulated the park owners' use of their property by regulating the relationship between landlord and tenant, (c) the alleged transfer of wealth from park owners to incumbent mobile home owners did not in itself convert regulation into physical invasion, and (d) neither the claim that the ordinance differed from apartment rent control--in that the ordinance benefited incumbent mobile home owners but not future owners, who would be forced to purchase the homes at a premium--nor the claim that the ordinance prevented park owners from choosing their tenants by threatening to raise rents for potential tenants they disfavored, had anything to do with whether the ordinance caused a physical taking; (2) the Supreme Court would not consider a claim that the ordinance constituted a denial of substantive due process, because (a) the park owners did not include a due process claim in their complaint nor raise such a claim before the state appellate court, and (b) the state courts did not address the claim; and (3) even though a facial challenge to the ordinance as a regulatory "taking," which challenge alleged that the ordinance did not substantially advance a legitimate state interest no matter how the ordinance was applied, was ripe for review regardless of the fact that the park owners had not sought rent increases under the ordinance, that challenge would not be reviewed by the Supreme Court, because (a) the regulatory taking claim was not fairly included within the sole takings question presented by the park owners' petition for certiorari, (b) Rule 14.1(a) of the Supreme Court Rules therefore created a heavy presumption against the Supreme Court's consideration of the regulatory taking claim, and (c) the park owners had not overcome that presumption.

Blackmun, J., concurred in the judgment, expressing the view that (1) the rent control ordinance was not a physical "taking" of property; (2) the substantive due process and regulatory takings claims were not properly raised before the Supreme Court; and (3) because the regulatory takings claim was not properly raised, it was unnecessary to decide whether the claim was ripe or which arguments would be relevant to such a claim.

Souter, J., concurred in the judgment, joining in the court's opinion except for its references to the relevance

and significance of the petitioners' allegations to a claim of regulatory taking.

Headnotes

EMINENT DOMAIN §103 > physical taking of property -- rent control -- > Headnote:
LEdHN[1A] [1A] LEdHN[1B] [1B] LEdHN[1C] [1C] LEdHN[1D] [1D] LEdHN[1E] [1E] LEdHN[1F] [1F] LEdHN[1G] [1G] LEdHN[1H] [1H]

A city's mobile home rent control ordinance, which rolls back rents for the land on which mobile homes are placed to the level of 2 years earlier and requires mobile home park owners to obtain the approval of the city council for any rent increases, does not authorize a per se "taking" of the park owners' property by compelled physical occupation, for which just compensation is required under the Federal Constitution's Fifth Amendment--even when the ordinance is considered in conjunction with a state mobile home residency law (MRL) which limits the bases on which a park owner can terminate a lease, generally prohibits park owners from requiring the removal of a mobile home when it is sold, prohibits park owners from charging transfer fees for such sales, and prohibits park owners from disapproving of a purchaser who is able to pay the rent--because (1) the park owners have voluntarily rented their land to mobile home owners and are not compelled to continue doing so, as the MRL allows park owners to evict their tenants on 6 or 12 months' notice if the park owners wish to change the use of their land; (2) on their face, the state and local laws at issue merely regulate the park owners' use of their property by regulating the relationship between landlord and tenant, and such forms of regulation are analyzed by engaging in the essentially ad hoc, factual inquiries necessary to determine whether a "regulatory taking" has occurred; (3) although the rent control ordinance allegedly transfers wealth from park owners to incumbent mobile home owners by allowing the latter to sell the mobile home at a premium based on the value of sub-market rents, the existence of such a transfer of wealth does not in itself convert regulation into physical invasion; (4) the claim that the ordinance differs from apartment rent control, in that the ordinance benefits incumbent mobile home owners without benefiting future owners, who will be forced to purchase the homes at a premium, might have some bearing on whether the ordinance causes a regulatory taking but has nothing to do with whether the ordinance causes a physical taking; and (5) the same may be said of the claim that the ordinance effects a physical occupation because the ordinance prevents park owners from choosing their tenants by threatening to raise rents for potential tenants they disfavor.

EMINENT DOMAIN §110 > requirement of compensation -- physical or regulatory taking -- > Headnote:
LEdHN[2] [2]

Where the government authorizes a physical occupation of property, or actually takes title, the takings clause of the Federal Constitution's Fifth Amendment generally requires compensation; but where the government merely regulates the use of property, compensation is required only if considerations such as the purpose of the regulation or the extent to which it deprives the owner of the economic use of the property suggest that the regulation has unfairly singled out the property owner to bear a burden that should be borne by the public as a whole.

EMINENT DOMAIN §75 > physical taking -- right of compensation -- > Headnote:
LEdHN[3] [3]

The government effects a physical taking of property, for purposes of the takings clause of the Federal Constitution's Fifth Amendment, only where the government requires landowners to submit to the physical occupation of their property; this element of required acquiescence is at the heart of the concept of occupation; thus, whether the government floods a landowner's property or does no more than require the landowner to suffer the installation of a cable, the takings clause requires compensation if the government authorizes a compelled physical invasion of property.

PROPERTY AND PROPERTY RIGHTS §3 > rights of ownership -- > Headnote:
LEdHN[4] [4]

The right to exclude is one of the most essential

elements of the group of rights that are commonly characterized as property.

While property may be regulated to a certain extent, if regulation goes too far it will be recognized as a "taking" of property for which just compensation is required under the *Federal Constitution's Fifth Amendment*.

APPEAL §793 > Supreme Court review of state court decision -- eminent domain -- > Headnote:
LEdHN[5] [5]

The United States Supreme Court--in reviewing on certiorari a state court decision which rejected claims that a city's mobile home rent control ordinance, considered in conjunction with a state mobile home residency law which limits the bases on which mobile home park owners may terminate a mobile home owner's tenancy in the park but does allow such termination where the park owners wish to change the use of their land, effects a "taking" of property by compelled physical invasion for which just compensation is required under the *Federal Constitution's Fifth Amendment*--will confine its review to the facial validity of the statute, where, although the plaintiff park owners suggest that the statutory procedure for changing the use of their land is in practice a "kind of gauntlet" which does not leave them free to make such a change, they do not claim to have run that "gauntlet," and thus the case provides no occasion for the Supreme Court to consider how the procedure has been applied to the park owners' property.

APPEAL §744.5 > Supreme Court review of state court decision -- issue not involved in record -- > Headnote:
LEdHN[8A] [8A]***LEdHN[8B]*** [8B]***LEdHN[8C]*** [8C]

The United States Supreme Court--in reviewing on certiorari a state appellate court decision which rejected challenges to the validity of a city's mobile home rent control ordinance--will not consider a claim that the ordinance constitutes a denial of substantive due process, where (1) the plaintiff mobile home park owners did not include a due process claim in their complaint nor raise such a claim before the state appellate court, and (2) the state courts did not address the claim; even if the rule that the Supreme Court, in reviewing state court judgments under *28 USCS 1257*, will not consider claims which were not raised or addressed below, is prudential rather than jurisdictional, the Supreme Court will adhere to the rule in this case.

EMINENT DOMAIN §110 > necessity of compensation -- landlord-tenant regulation -- > Headnote:
LEdHN[6] [6]

When landowners decide to rent their land to tenants, the government may place ceilings on the rents the landowners can charge, or require the landowners to accept tenants they do not like, without automatically having to pay compensation pursuant to the *takings clause* of the *Federal Constitution's Fifth Amendment*.

APPEAL §1087.7 > Headnote:
LEdHN[9A] [9A]***LEdHN[9B]*** [9B]***LEdHN[9C]*** [9C]

The United States Supreme Court--in reviewing on certiorari a state appellate court decision which rejected challenges to the validity of a city's mobile home rent control ordinance, where the Supreme Court granted certiorari on a single question relating to the *takings clause* of the *Federal Constitution's Fifth Amendment*, namely, whether the state court erred in disregarding two Federal Courts of Appeals decisions which had held that similar ordinances effected a physical "taking" of property within the meaning of the *Fifth Amendment*--will not consider the question whether the ordinance effects a regulatory "taking," but will leave that question for the state courts to address in the first instance, because (1) the question presented, fairly construed, is the equivalent of the question whether the state court erred in finding no physical taking; (2) whether the ordinance effects a regulatory taking is a question related and perhaps complementary to the question

EMINENT DOMAIN §98 > taking -- regulation of property use -- > Headnote:
LEdHN[7] [7]

presented, but is not fairly included within the question presented, as consideration of the one question would not assist in resolving the other, and neither question is subsidiary to the other; (3) Rule 14.1(a) of the United States Supreme Court Rules--which provides that only the questions set forth in the petition for certiorari, or fairly included therein, will be considered by the Supreme Court--therefore creates a heavy presumption against the Supreme Court's consideration of the regulatory taking claim; and (4) the petitioner mobile home park owners have not overcome that presumption, since (a) the regulatory taking question, though important, is not as important from an institutional perspective as the physical taking question, (b) so far as is known, the lower courts have not reached conflicting results as to whether mobile home rent control ordinances effect regulatory takings, as they have over whether such ordinances effect physical takings, and (c) prudence dictates awaiting a case in which the regulatory taking issue was fully litigated below.

ACTIONS §8 > rent control as "taking" -- ripeness of claim -- > Headnote:
LEdHN[13][] [13]

With respect to a mobile home rent control ordinance, (1) a claim that the ordinance, as applied to particular mobile home parks, effects a regulatory "taking" of property for which just compensation is required under the *Federal Constitution's Fifth Amendment*, is unripe where the park owners have not sought rent increases under the ordinance; but (2) a facial challenge to the ordinance, which challenge alleges that the ordinance does not substantially advance a legitimate state interest no matter how the ordinance is applied, is ripe, because this allegation does not depend on the extent to which the park owners are deprived of the economic use of their particular pieces of property or the extent to which those particular owners are compensated.

APPEAL §906 > denial of discretionary review -- state court -- > Headnote:
LEdHN[10][] [10]

A denial of discretionary review by the Supreme Court of California expresses no view as to the merits of a claim.

APPEAL §910.8 > effect of denial of certiorari -- > Headnote:
LEdHN[11][] [11]

A denial of certiorari by the United States Supreme Court expresses no view as to the merits of a claim.

APPEAL §1104 > necessity of raising question below -- > Headnote:
LEdHN[12][] [12]

In cases arising from federal courts, the rule that the United States Supreme Court will not consider claims which were not raised or addressed below is prudential rather than jurisdictional.

APPEAL §744.5 > Supreme Court review of state court decision -- issue not in record -- eminent domain -- > Headnote:
LEdHN[14A][] [14A]***LEdHN[14B]***[] [14B]

The United States Supreme Court, in reviewing on certiorari a state appellate court decision which rejected challenges to the validity of a city's mobile home rent control ordinance, will not decline to consider a claim, alleging that the ordinance effects a regulatory "taking" of property for which just compensation is required under the *Federal Constitution's Fifth Amendment*, on the ground that it is unclear whether the plaintiff mobile home park owners made this argument below--as portions of the owners' complaint and briefing can be read either to argue a regulatory taking or to support their argument that the ordinance effected a physical "taking" of property, and for the same reason it is equally ambiguous whether the state appellate court addressed the issue--because (1) the park owners clearly raised a taking claim in the state courts, and the question whether the ordinance took the park owners' property without compensation in violation of the *Fifth Amendment* is thus properly before the Supreme Court, and (2) arguments that the ordinance constitutes a taking in two different ways, by physical occupation and by regulation, are not separate claims but rather separate arguments in support of the single claim that

the ordinance effects an unconstitutional taking.

APPEAL §708 > scope of review -- federal claim --
> Headnote:
LEdHN[15] [15]

Once a federal claim is properly presented in the state courts, a party can make any argument in support of that claim on certiorari to the United States Supreme Court; parties are not limited to the precise arguments they made below.

APPEAL §1082 > statement of questions -- > Headnote:
LEdHN[16] [16]

Litigants seeking review in the United States Supreme Court of a claim properly raised in the lower courts generally possess the ability to frame the question to be decided in any way they choose, without being limited to the manner in which the question was framed below.

APPEAL §1087.3 > Headnote:
LEdHN[17] [17]

The principle, under Rule 14.1(a) of the United States Supreme Court Rules, that the Supreme Court ordinarily will not consider questions outside those presented in the petition for certiorari, is prudential in nature, but will be disregarded in only the most exceptional cases, where reasons of urgency or of economy suggest the need to address the unpresented question in the case under consideration.

APPEAL §1087.3 > Headnote:
LEdHN[18] [18]

Rule 14.1(a) of the United States Supreme Court Rules--which provides that only the questions set forth in the petition for certiorari, or fairly included therein, will be considered by the Supreme Court--serves two important and related purposes, namely, (1) providing the respondent with notice of the grounds upon which the petitioner is seeking certiorari, and enabling the respondent to sharpen the arguments as to why certiorari should not be granted, thereby relieving the respondent of the expense of unnecessary litigation on the merits and the burden of opposing certiorari on unpresented questions; and (2) assisting the Supreme Court in selecting the cases in which certiorari will be granted.

APPEAL §910.6 > grant of certiorari -- > Headnote:
LEdHN[19] [19]

The fact that the lower courts have reached conflicting results as to whether mobile home rent control ordinances effect a physical "taking" of property, for which just compensation is required under the *Federal Constitution's Fifth Amendment*, is a substantial reason for granting certiorari on this issue under *Rule 10 of the United States Supreme Court Rules*.

Syllabus

The *Fifth Amendment's Takings Clause* generally requires just compensation where the government authorizes a physical occupation of property. But where the government merely regulates the property's use, compensation is required only if considerations such as the regulation's purpose or the extent to which it deprives the owner of the property's economic use suggests that the regulation has unfairly singled out the property owner to bear a burden that should be borne by the public as a whole. Petitioners, mobile home park owners in respondent Escondido, California, rent pads of land to mobile home owners. When the homes are sold, the new owners generally continue to rent the pads. Under the California Mobilehome Residency Law, the bases upon which [****2] a park owner may terminate a mobile home owner's tenancy are limited to, *inter alia*, nonpayment of rent and the park owner's desire to change the use of his land. The park owner may not require the removal of a mobile home when it is sold and may neither charge a transfer fee for the sale nor disapprove of a purchaser who is able to pay rent. The state law does not limit the rent the park owner may

charge, but Escondido has a rent control ordinance setting mobile home rents back to their 1986 levels and prohibiting rent increases without the city council's approval. The Superior Court dismissed lawsuits filed by petitioners and others challenging the ordinance, rejecting the argument that the ordinance effected a physical taking by depriving park owners of all use and occupancy of their property and granting to their tenants, and their tenants' successors, the right to physically permanently occupy and use the property. The Court of Appeal affirmed.

Held:

1. The rent control ordinance does not authorize an unwanted physical occupation of petitioners' property and thus does not amount to a *per se* taking. Petitioners' argument -- that the rent control ordinance authorizes [****3] a physical taking because, coupled with the state law's restrictions, it increases a mobile home's value by giving the homeowner the right to occupy the pad indefinitely at a submarket rent -- is unpersuasive. The government effects a physical taking only where it *requires* the landowner to submit to the physical occupation of his land. Here, petitioners have voluntarily rented their land to mobile home owners and are not required to continue to do so by either the city or the State. On their face, the laws at issue merely regulate petitioners' *use* of their land by regulating the relationship between landlord and tenant. Any transfer of wealth from park owners to incumbent mobile home owners in the form of submarket rent does not itself convert regulation into physical invasion. Additional contentions made by petitioners -- that the ordinance benefits current mobile home owners but not future owners, who must purchase the homes at premiums resulting from the homes' increased value, and that the ordinance deprives petitioners of the ability to choose their incoming tenants -- might have some bearing on whether the ordinance causes a regulatory taking, but have nothing to do [****4] with whether it causes a physical taking. Moreover, the footnote in *Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 439, n. 17, 73 L. Ed. 2d 868, 102 S. Ct. 3164* -- that a physical taking claim cannot be defeated by an argument that a landlord can avoid a statute's restrictions by ceasing to rent his property, because his ability to rent may not be conditioned on forfeiting the right to compensation for a physical occupation -- has no relevance here, where there has been no physical taking. Since petitioners have made no attempt to change how their land is used, this case also presents no occasion to consider whether the statute, as applied, prevents them from making a change. Pp. 526-532.

2. Petitioners' claim that the ordinance constitutes a denial of substantive due process is not properly before this Court because it was not raised below or addressed by the state courts. The question whether this Court's customary refusal to consider claims not raised or addressed below is a jurisdictional or prudential rule need not be resolved here, because even if the rule were prudential, it would be adhered to in this case. Pp. 532-533.

3. Also improperly before this Court is petitioners' claim that the ordinance [****5] constitutes a regulatory taking. The regulatory taking claim is ripe for review; and the fact that it was not raised below does not mean that it could not be properly raised before this Court, since once petitioners properly raised a taking claim, they could have formulated, in this Court, any argument they liked in support of that claim. Nonetheless, the claim will not be considered because, under this Court's Rule 14.1(a), only questions set forth, or fairly included, in the petition for certiorari are considered. Rule 14.1(a) is prudential, but is disregarded only where reasons of urgency or economy suggest the need to address the unpresented question in the case under consideration. The Rule provides the respondent with notice of the grounds on which certiorari is sought, thus relieving him of the expense of unnecessary litigation on the merits and the burden of opposing certiorari on unpresented questions. It also assists the Court in selecting the cases in which certiorari will be granted. By forcing the parties to focus on the questions the Court views as particularly important, the Rule enables the Court to use its resources efficiently. Petitioners' question presented was [****6] whether the lower court erred in finding no physical taking, and the regulatory taking claim is related to, but not fairly included in, that question. Thus, petitioners must overcome the very heavy presumption against consideration of the regulatory taking claim, which they have not done. While that claim is important, lower courts have not reached conflicting results on the claim as they have on the physical taking claim. Prudence also dictates awaiting a case in which the issue was fully litigated below, to have the benefit of developed arguments and lower court opinions squarely addressing the question. Thus, the regulatory taking issue should be left for the California courts to address in the first instance. Pp. 533-538.

Counsel: Robert J. Jagiello argued the cause for petitioners. With him on the briefs was Robert H. Bork.

Carter G. Phillips argued the cause for respondent. With him on the brief were Rex E. Lee, Donald R. Lincoln, Linda B. Reich, David R. Chapman, and Jeffrey R. Epp. *

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* Briefs of amici curiae urging reversal were filed for Action in Santa Monica by Brenda Powers Barnes; for the Apartment Association of Greater Los Angeles by Stephen L. Jones; for the California Association of Realtors et al. by John E. Mueller, Marguerite Mary Leoni, Laurene K. Janik and William M. Pfeiffer; for the Florida Manufactured Housing Association, Inc., by Jack M. Skelding, Jr.; for the Institute of Real Estate Management of the National Association of Realtors by Jonathan T. Howe, Terrence Hutton, and Henry M. Schaffer; for the Manufactured Housing Educational Trusts of Los Angeles County, California, et al. by Jerrold A. Fadem, George Kimball, Charles S. Treat, and Kim N. A. Richards; for the Manufactured Housing Educational Trust of Santa Clara County by Robert K. Best; for the Pacific Legal Foundation by Ronald A. Zumbrun, Edward J. Connor, Jr., and Timothy A. Bittle; for the Rent Stabilization Association of New York City, Inc., et al. by Erwin N. Griswold and Stephen J. Goodman; for the Washington Legal Foundation et al. by Daniel J. Popeo, Paul D. Kamenar, and Jonathan K. Van Patten; and for the Western Mobilehome Association by Michael A. Willemsen and David Spangenberg.

Briefs of amici curiae urging affirmance were filed for the city of San Jose et al. by Joan R. Gallo, George Rios, Manuela Albuquerque, Stanley C. Hatch, Glenn R. Watson, William Camil, Lynn R. McDougal, Scott H. Howard, David J. Erwin, Robert L. Kress, Charles J. Williams, David H. Hirsch, Steven F. Nord, Marc G. Hynes, John L. Cook, Daniel S. Hentschke, Gary L. Gillig, Jean Leonard Harris, David E. Schricker, Michael F. Dean, James Penman, Peter D. Bulens, John W. Witt, Louise H. Renne, James P. Botz, Mark G. Sellers, Robert B. Ewing, Angil P. Morris, James G. Rourke, and Thomas Haas; for the American Association of Retired Persons by Steven S. Zalesnick and Joan Wise; for the city of Santa Monica et al. by Robert M. Myers, Joseph Lawrence, Martin Tachiki, Barry Rosenbaum, David Pettit, Karl M. Manheim, and Shane Stark; for the Golden State Mobilhome Owners League, Inc., et al. by Fran M. Layton, Joseph L. Sax, and Bruce E. Stanton; for the International City/County Management Association et al. by Richard Ruda, Andrew G. Schultz, Edward Ricco, Charles K. Purcell, and James P. Bieg; for the National Trust for Historic Preservation in the United States et al. by Lloyd N. Cutler, Louis R. Cohen, David R. Johnson, Jerold S. Kayden, and Elizabeth S. Merritt; and for the New Jersey Department of the Public Advocate by David Ben-Asher.

Briefs of amici curiae were filed for the Arizona Mobile Housing Association, Inc., by Michael A. Parham; for the California Mobile Home Parkowners Alliance by Michael M. Berger and Joel G. Hirsch; for the Escondido Mobilehome Owners' Positive Action Committee by Richard I. Singer and Elvi J. Olesen; and for the Manufactured Housing Association in New Jersey, Inc., by Christopher J. Hanlon and Henry N. Portner.

Judges: O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and WHITE, STEVENS, SCALIA, KENNEDY, and THOMAS, JJ., joined. BLACKMUN, J., post, p. 539, and SOUTER, J., post, p. 539, filed opinions concurring in the judgment.

Opinion by: O'CONNOR

Opinion

[*522] [***162] [**1526] JUSTICE O'CONNOR delivered the opinion of the Court.

LEdHN[1A][↑] [1A] LEdHN[2][↑] [2]HN1[↑] The Takings Clause of the Fifth Amendment provides: "Nor shall private property be taken for public use, without just compensation." Most of our [****7] cases interpreting the Clause fall within two distinct classes. Where the government authorizes a physical occupation of property (or actually takes title), the Takings Clause generally requires compensation. See, *e. g.,* Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 426, 73 L. Ed. 2d 868, 102 S. Ct. 3164 (1982). But where the government merely regulates the use of property, compensation [*523] is required only if considerations such as the purpose of the regulation or the extent to which it deprives the owner of the economic use of the property suggest that the regulation has unfairly singled out the property owner to bear a burden that should be borne by the public as a whole. See, *e. g.,* Penn Central Transportation Co. v. New York City, 438 U.S. 104, 123-125, 57 L. Ed. 2d 631, 98 S. Ct. 2646 (1978). The first category of cases requires courts to apply a clear rule; the second necessarily entails complex factual assessments of the purposes and economic effects of government actions.

LEdHN[1B][↑] [1B]Petitioners own mobile home parks in Escondido, California. They contend that a local rent control ordinance, when viewed against the backdrop of California's Mobilehome Residency Law, amounts to a physical occupation of their property, entitling [****8] them to compensation under the first category of cases discussed above.

I

The term "mobile home" is somewhat misleading. Mobile homes are largely immobile as a practical matter, because the cost of moving one is often a significant fraction of the value of the mobile home itself. They are generally placed permanently in parks; once in place, only about 1 in every 100 mobile homes is ever moved. Hirsch & Hirsch, Legal-Economic Analysis of Rent Controls in a Mobile Home Context: Placement [***163] Values and Vacancy Decontrol, *35 UCLA L. Rev. 399, 405 (1988)*. A mobile home owner typically rents a plot of land, called a "pad," from the owner of a mobile home park. The park owner provides private roads within the park, common facilities such as washing machines or a swimming pool, and often utilities. The mobile home owner often invests in site-specific improvements such as a driveway, steps, walkways, porches, or landscaping. When the mobile home owner wishes to move, the mobile home is usually sold in place, and the purchaser continues to rent the pad on which the mobile home is located.

[*524] In 1978, California enacted its Mobilehome Residency Law, *Cal. Civ. Code Ann. § 798* (West 1982 and [****9] Supp. 1991). The legislature found "that, because of the high cost of moving mobilehomes, the potential for damage resulting therefrom, the requirements relating to the installation of mobilehomes, and the cost of landscaping or lot preparation, it is necessary that the owners of mobilehomes occupied within mobilehome parks be provided with the unique protection from actual or constructive eviction afforded by the provisions of this chapter." § 798.55(a).

The Mobilehome Residency Law limits the bases upon which a park owner may terminate a mobile home owner's tenancy. These include the nonpayment of rent, the mobile home owner's violation of law or park rules, and the park owner's desire to change the use of his land. *§ 798.56*. While a rental agreement is in effect, however, the park owner generally may not require the removal of a mobile home when it is sold. § 798.73. The park owner may neither charge a transfer fee for the sale, § 798.72, nor disapprove of the purchaser, provided that the purchaser has the ability to pay the rent, § 798.74. The Mobilehome Residency Law contains a [**1527] number of other detailed provisions, but none limit the rent the park owner may charge.

In the wake of [****10] the Mobilehome Residency Law, various communities in California adopted mobile home rent control ordinances. See Hirsch & Hirsch, *supra*, at 408-411. The voters of Escondido did the same in 1988 by approving Proposition K, the rent control ordinance challenged here. The ordinance sets rents back to their 1986 levels and prohibits rent increases without the approval of the city council. Park owners may apply to the council for rent increases at any time. The council must approve any increases it determines to be "just, fair and reasonable," after considering the following nonexclusive list of factors: (1) changes in the Consumer Price Index; (2) the rent charged for comparable mobile home pads in Escondido; (3) the length of time since [*525] the last rent increase; (4) the cost of any capital improvements related to the pad or pads at issue; (5) changes in property taxes; (6) changes in any rent paid by the park owner for the land; (7) changes in utility charges; (8) changes in operating and maintenance expenses; (9) the need for repairs other than for ordinary wear and tear; (10) the amount and quality of services provided to the affected tenant; and (11) any lawful existing lease. Ordinance [****11] § 4(g), App. 11-12.

Petitioners John and Irene Yee own the Friendly Hills and Sunset Terrace Mobile Home Parks, both of which are located in the city of Escondido. A few months after the adoption of Escondido's rent control ordinance, they filed suit in San Diego County Superior Court. According to the [***164] complaint, "the rent control law has had the effect of depriving the plaintiffs of all use and occupancy of [their] real property and granting to the tenants of mobilehomes presently in The Park, as well as the successors in interest of such tenants, the right to physically permanently occupy and use the real property of Plaintiff." *Id.*, at 3, P6. The Yees requested damages of $ 6 million, a declaration that the rent control ordinance is unconstitutional, and an injunction barring the ordinance's enforcement. *Id.*, at 5-6.

In their opposition to the city's demurrer, the Yees relied almost entirely on *Hall v. Santa Barbara, 833 F.2d 1270 (CA9 1987)*, cert. denied, *485 U.S. 940, 99 L. Ed. 2d 281, 108 S. Ct. 1120 (1988)*, which had held that a similar mobile home rent control ordinance effected a physical taking under *Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 73 L. Ed. 2d 868, 102 S. Ct. 3164 (1982)*. [****12] The Yees candidly admitted that "in fact, the *Hall* decision was used [as] a guide in drafting the present Complaint." 2 Tr. 318, Points & Authorities in Opposition to Demurrer 4. The Superior Court nevertheless sustained the city's demurrer and dismissed the Yees' complaint. App. to Pet. for Cert. C-42.

The Yees were not alone. Eleven other park owners filed similar suits against the city shortly afterwards, and all were [*526] dismissed. By stipulation, all 12 cases were consolidated for appeal; the parties agreed that all would be submitted for decision by the California Court of Appeal on the briefs and oral argument in the *Yee* case.

The Court of Appeal affirmed, in an opinion primarily devoted to expressing the court's disagreement with the reasoning of *Hall*. The court concluded: "*Loretto* in no way suggests that the Escondido ordinance authorizes a permanent physical occupation of the landlord's property and therefore constitutes a per se taking." *224 Cal. App. 3d 1349, 1358, 274 Cal. Rptr. 551, 557 (1990)*. The California Supreme Court denied review. App. to Pet. for Cert. B-41.

Eight of the twelve park owners, including the Yees, joined in a petition for certiorari. We granted certiorari, *502 U.S. 905 [****13] (1991)*, to resolve the conflict between the decision below and those of two of the Federal Courts of Appeals, in *Hall, supra*, and *Pinewood Estates of Michigan v. Barnegat Township Leveling Board, 898 F.2d 347 (CA3 1990)*.

[**1528] II

Petitioners do not claim that the ordinary rent control statutes regulating housing throughout the country violate the *Takings Clause*. Brief for Petitioners 7, 10. Cf. *Pennell v. San Jose, 485 U.S. 1, 12, n. 6, 99 L. Ed. 2d 1, 108 S. Ct. 849 (1988)*; *Loretto, supra, at 440*. Instead, their argument is predicated on the unusual economic relationship between park owners and mobile home owners. Park owners may no longer set rents or decide who their tenants will be. As a result, according to petitioners, any reduction in the rent for a mobile home pad causes a corresponding increase in the value of a mobile home, because the mobile home owner now owns, in addition to a mobile home, the right to occupy a pad at a rent below the value that would be set by the free market. Cf. Hirsch & Hirsch, 35 UCLA L. Rev., at 425. Because under the California Mobilehome [***165] Residency Law the park owner cannot evict a mobile [*527] home owner or easily convert the property to other uses, [****14] the argument goes, the mobile home owner is effectively a perpetual tenant of the park, and the increase in the mobile home's value thus represents the right to occupy a pad at below-market rent indefinitely. And because the Mobilehome Residency Law permits the mobile home owner to sell the mobile home in place, the mobile home owner can receive a premium from the purchaser corresponding to this increase in value. The amount of this premium is not limited by the Mobilehome Residency Law or the Escondido ordinance. As a result, petitioners conclude, the rent control ordinance has transferred a discrete interest in land -- the right to occupy the land indefinitely at a submarket rent -- from the park owner to the mobile home owner. Petitioners contend that what has been transferred from park owner to mobile home owner is no less than a right of physical occupation of the park owner's land.

LEdHN[3][3]This argument, while perhaps within the scope of our regulatory taking cases, cannot be squared easily with our cases on physical takings. ***HN2***[] The government effects a physical taking only where it *requires* the landowner to submit to the physical occupation of his land. "This element of required [****15] acquiescence is at the heart of the concept of occupation." *FCC v. Florida Power Corp., 480 U.S. 245, 252, 94 L. Ed. 2d 282, 107 S. Ct. 1107 (1987)*.Thus whether the government floods a landowner's property, *Pumpelly v. Green Bay Co., 80 U.S. 166, 13 Wall. 166, 20 L. Ed. 557 (1872)*, or does no more than require the landowner to suffer the installation of a cable, *Loretto, supra*, the *Takings Clause* requires compensation if the government authorizes a compelled physical invasion of property.

LEdHN[1C][] [1C]***LEdHN[4]***[] [4]But the Escondido rent control ordinance, even when considered in conjunction with the California Mobilehome Residency Law, authorizes no such thing. Petitioners voluntarily rented their land to mobile home owners. At least on the face of the regulatory scheme, neither the city nor the State compels petitioners, once they have rented their property [*528] to tenants, to continue doing so. To the contrary, the Mobilehome Residency Law provides that a park owner who wishes to change the use of his land may evict his tenants, albeit with 6 or 12 months notice. *Cal. Civ. Code Ann. § 798.56(g)*. Put bluntly, no government has required any physical invasion of petitioners' property. Petitioners' tenants were invited by petitioners, not forced [****16] upon them by the government. See *Florida Power, supra, at 252-253*. While ***HN3***[] the "right to exclude" is doubtless, as petitioners assert, "one of the most essential sticks in the bundle of rights that are commonly characterized as property," *Kaiser Aetna v. United States, 444 U.S. 164, 176, 62 L. Ed. 2d 332, 100 S. Ct. 383 (1979)*, we do not find that right to have been taken from petitioners on the mere face of the Escondido ordinance.

LEdHN[5][↑] [5]Petitioners suggest that the statutory procedure for changing the use of a mobile [**1529] home park is in practice "a kind of gauntlet," in that they are not in fact free to change the use of their land. Reply Brief for Petitioners 10, n. 16. Because petitioners do not claim to have run that gauntlet, however, this case provides no occasion to consider how the procedure has been applied to petitioners' property, and we accordingly confine [***166] ourselves to the face of the statute. See *Keystone Bituminous Coal Assn. v. DeBenedictis, 480 U.S. 470, 493-495, 94 L. Ed. 2d 472, 107 S. Ct. 1232 (1987)*. A different case would be presented were the statute, on its face or as applied, to compel a landowner over objection to rent his property or to refrain in perpetuity from terminating a tenancy. See *Florida Power, [****17] supra, at 251-252, n. 6*; see also *Nollan v. California Coastal Comm'n, 483 U.S. 825, 831-832, 97 L. Ed. 2d 677, 107 S. Ct. 3141 (1987)*; *Fresh Pond Shopping Center, Inc. v. Callahan, 464 U.S. 875, 877, 78 L. Ed. 2d 215, 104 S. Ct. 218 (1983)* (REHNQUIST, J., dissenting).

LEdHN[1D][↑] [1D]LEdHN[6][↑] [6]LEdHN[7][↑] [7]On their face, the state and local laws at issue here merely regulate petitioners' *use* of their land by regulating the relationship between landlord and tenant. "This Court has consistently affirmed that HN4[↑] States have broad power to regulate housing conditions in general and the landlord-tenant relationship [*529] in particular without paying compensation for all economic injuries that such regulation entails." *Loretto, 458 U.S. at 440*. See also *Florida Power, supra, at 252* ("statutes regulating the economic relations of landlords and tenants are not *per se* takings"). When a landowner decides to rent his land to tenants, the government may place ceilings on the rents the landowner can charge, see, *e. g., Pennell, supra, at 12, n. 6*, or require the landowner to accept tenants he does not like, see, *e. g., Heart of Atlanta Motel, Inc. v. United States, 379 U.S. 241, 261, 13 L. Ed. 2d 258, 85 S. Ct. 348 (1964)*, without automatically having to pay compensation. See [****18] also *PruneYard Shopping Center v. Robins, 447 U.S. 74, 82-84, 64 L. Ed. 2d 741, 100 S. Ct. 2035 (1980)*. Such forms of regulation are analyzed by engaging in the "essentially ad hoc, factual inquiries" necessary to determine whether a regulatory taking has occurred. *Kaiser Aetna, supra, at 175*. In the words of Justice Holmes, "while property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." *Pennsylvania Coal Co. v. Mahon, 260 U.S. 393, 415, 67 L. Ed. 322, 43 S. Ct. 158 (1922)*.

LEdHN[1E][↑] [1E]Petitioners emphasize that the HN5[↑] ordinance transfers wealth from park owners to incumbent mobile home owners. Other forms of land use regulation, however, can also be said to transfer wealth from the one who is regulated to another. Ordinary rent control often transfers wealth from landlords to tenants by reducing the landlords' income and the tenants' monthly payments, although it does not cause a one-time transfer of value as occurs with mobile homes. Traditional zoning regulations can transfer wealth from those whose activities are prohibited to their neighbors; when a property owner is barred from mining coal on his land, for example, the value of his property may decline but the value of his neighbor's [****19] property may rise. The mobile home owner's ability to sell the mobile home at a premium may make this wealth transfer more *visible* than in the ordinary case, see Epstein, Rent Control and the Theory of Efficient Regulation, *54 Brooklyn L. Rev. 741, 758-759 (1988)*, but the existence [*530] of the transfer in itself does not convert regulation into physical invasion.

Petitioners also rely heavily on their allegation that the ordinance benefits incumbent mobile home owners [***167] without benefiting future mobile home owners, who will be forced to purchase mobile homes at premiums. Mobile homes, like motor vehicles, ordinarily decline in value with age. But the [**1530] effect of the rent control ordinance, coupled with the restrictions on the park owner's freedom to reject new tenants, is to increase significantly the value of the mobile home. This increased value normally benefits only the tenant in possession at the time the rent control is imposed. See Hirsch & Hirsch, 35 UCLA L. Rev., at 430-431. Petitioners are correct in citing the existence of this premium as a difference between the alleged effect of the Escondido ordinance and that of an ordinary apartment rent control statute. Most apartment [****20] tenants do not sell anything to their successors (and are often prohibited from charging "key money"), so a typical rent control statute will transfer wealth from the landlord to the incumbent tenant and all future tenants. By contrast, petitioners contend that the Escondido ordinance transfers wealth only to the incumbent mobile home owner. This effect might have some bearing on whether the ordinance causes a *regulatory* taking, as it may shed some light on whether there is a sufficient nexus between the effect of the ordinance and the objectives it is supposed to advance. See *Nollan v.*

California Coastal Comm'n, supra, at 834-835. ***HN6***[] But it has nothing to do with whether the ordinance causes a *physical* taking. Whether the ordinance benefits only current mobile home owners or all mobile home owners, it does not require petitioners to submit to the physical occupation of their land.

LEdHN[1F][] [1F]The same may be said of petitioners' contention that the ordinance amounts to compelled physical occupation because it deprives petitioners of the ability to choose their incoming [*531] tenants. * Again, this effect may be relevant to a regulatory taking argument, as it may be one factor a reviewing [****21] court would wish to consider in determining whether the ordinance unjustly imposes a burden on petitioners that should "be compensated by the government, rather than remaining disproportionately concentrated on a few persons." *Penn Central Transportation Co. v. New York City, 438 U.S. at 124*. ***HN7***[] But it does not convert regulation into the unwanted physical occupation of land. Because they voluntarily open their property to occupation by others, petitioners cannot assert a *per se* right to compensation based on their inability to exclude particular individuals. See *Heart of Atlanta Motel, Inc. v. United States, 379 U.S. at 261*; see also *id., at 259* ("Appellant has no 'right' to select its guests as it sees fit, free from governmental regulation"); *Prune-Yard Shopping Center v. Robins, 447 U.S. at 82-84*.

[****22] Petitioners' final line of argument rests on a footnote in *Loretto*, in [***168] which we rejected the contention that "the landlord could avoid the requirements of [the statute forcing her to permit cable to be permanently placed on her property] by ceasing to rent the building to tenants." We found this possibility insufficient to defeat a physical taking claim, because "***HN8***[] a landlord's ability to rent his property may not be conditioned on his forfeiting the right to compensation for a physical occupation." *Loretto, 458 U.S. at 439, n. 17*. Petitioners argue that if they have to leave the mobile home park business in order to avoid the strictures of the Escondido [*532] ordinance, their ability to rent their property has in fact been conditioned on such a forfeiture. This argument fails at its base, however, because there has simply been no compelled physical occupation giving rise to a right to compensation that [**1531] petitioners could have forfeited. Had the city required such an occupation, of course, petitioners would have a right to compensation, and the city might then lack the power to condition petitioners' ability to run mobile home parks on their waiver of this right. Cf. *Nollan v. California Coastal Comm'n, [****23] 483 U.S. at 837*. But because the ordinance does not effect a physical taking in the first place, this footnote in *Loretto* does not help petitioners.

With respect to physical takings, then, this case is not far removed from *FCC v. Florida Power Corp., 480 U.S. 245, 94 L. Ed. 2d 282, 107 S. Ct. 1107 (1987)*, in which the respondent had voluntarily leased space on its utility poles to a cable television company for the installation of cables. The Federal Government, exercising its statutory authority to regulate pole attachment agreements, substantially reduced the annual rent. We rejected the respondent's claim that "it is a taking under *Loretto* for a tenant invited to lease at a rent of $ 7.15 to remain at the regulated rent of $ 1.79." *Id., at 252*. We explained that "it is the invitation, not the rent, that makes the difference. The line which separates [this case] from *Loretto* is the unambiguous distinction between a . . . lessee and an interloper with a government license." *Id., at 252-253*. The distinction is equally unambiguous here. ***HN9***[] The Escondido rent control ordinance, even considered against the backdrop of California's Mobilehome Residency Law, does not authorize an unwanted physical [****24] occupation of petitioners' property. It is a regulation of petitioners' *use* of their property, and thus does not amount to a *per se* taking.

III

LEdHN[8A][] [8A] ***LEdHN[9A]***[] [9A]In this Court, petitioners attempt to challenge the ordinance on two additional grounds: They argue that it constitutes a denial of substantive due process and a regulatory [*533] taking. Neither of these claims is properly before us. The first was not raised or addressed below, and the second is not fairly included in the question on which we granted certiorari.

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* ***LEdHN[1G]***[] [1G] Strictly speaking, the Escondido rent control ordinance only limits rents. Petitioners' inability to select their incoming tenants is a product of the State's Mobilehome Residency Law, the constitutionality of which has never been at issue in this case. (The State, moreover, has never been a party.) But we understand petitioners to be making a more subtle argument -- that before the adoption of the ordinance they were able to influence a mobile home owner's selection of a purchaser by threatening to increase the rent for prospective purchasers they disfavored. To the extent the rent control ordinance deprives petitioners of this type of influence, petitioners' argument is one we must consider.

A

LEdHN[8B] [8B] LEdHN[10] [10] LEdHN[11] [11]The Yees did not include a due process claim in their complaint. Nor did petitioners raise a due process claim in the Court of Appeal. It was not until their petition for review in the California Supreme Court that petitioners finally raised a substantive due process claim. But the California Supreme Court denied [***169] discretionary review. Such a denial, as in this Court, expresses no view as to the merits. See People v. Triggs, 8 Cal. 3d 884, 890-891, 506 P.2d 232, 236, 106 Cal. Rptr. 408 (1973). In short, petitioners did not raise a substantive due process claim in the state courts, and no state court has addressed such a claim.

LEdHN[8C] [8C]LEdHN[12] [12]HN10 In reviewing the judgments of state courts under the jurisdictional [****25] grant of 28 U. S. C. § 1257, the Court has, with very rare exceptions, refused to consider petitioners' claims that were not raised or addressed below. Illinois v. Gates, 462 U.S. 213, 218-220, 76 L. Ed. 2d 527, 103 S. Ct. 2317 (1983).While we have expressed inconsistent views as to whether this rule is jurisdictional or prudential in cases arising from state courts, see *ibid.*, we need not resolve the question here. (In cases arising from federal courts, the rule is prudential only. See, *e. g.,* Carlson v. Green, 446 U.S. 14, 17, n. 2, 64 L. Ed. 2d 15, 100 S. Ct. 1468 (1980).) Even if the rule were prudential, we would adhere to it in this case. Because petitioners did not raise their substantive due process claim below, and because the state courts did not address it, we will not consider it here.

B

LEdHN[13] [13]As a preliminary matter, we must address respondent's assertion that a regulatory taking claim is unripe because petitioners have not sought rent increases. HN11 While [**1532] respondent is correct that a claim that the ordinance effects a regulatory [*534] taking *as applied* to petitioners' property would be unripe for this reason, see Williamson County Regional Planning Comm'n v. Hamilton Bank of Johnson City, 473 U.S. 172, 186-197, 87 L. Ed. 2d 126, 105 S. Ct. 3108 (1985), [****26] petitioners mount a *facial* challenge to the ordinance. They allege in this Court that the ordinance does not "'substantially advance'" a "'legitimate state interest'" no matter how it is applied. See Nollan v. California Coastal Comm'n, supra, at 834; Agins v. Tiburon, 447 U.S. 255, 260, 65 L. Ed. 2d 106, 100 S. Ct. 2138 (1980). As this allegation does not depend on the extent to which petitioners are deprived of the economic use of their particular pieces of property or the extent to which these particular petitioners are compensated, petitioners' facial challenge is ripe. See Keystone Bituminous Coal Assn. v. DeBenedictis, 480 U.S. at 495; Agins, supra, at 260.

LEdHN[14A] [14A]We must also reject respondent's contention that the regulatory taking argument is not properly before us because it was not made below. It *is* unclear whether petitioners made this argument below: Portions of their complaint and briefing can be read either to argue a regulatory taking or to support their physical taking argument. For the same reason it is equally ambiguous whether the Court of Appeal addressed the issue. Yet petitioners' regulatory taking argument stands in a posture different from their substantive [****27] due process claim.

LEdHN[14B] [14B]LEdHN[15] [15]Petitioners unquestionably raised a taking claim in the state courts. The question whether the rent control ordinance took their property without compensation, in violation of the Fifth Amendment's Takings Clause, is thus properly before us. HN12 Once a federal claim is properly presented, a party can make any argument in support of that claim; parties are not limited to the precise arguments they made below. [***170] Bankers Life & Casualty Co. v. Crenshaw, 486 U.S. 71, 78, n. 2, 100 L. Ed. 2d 62, 108 S. Ct. 1645 (1988);Gates, supra, at 219-220;Dewey v. Des Moines, 173 U.S. 193, 197-198, 43 L. Ed. 665, 19 S. Ct. 379 (1899).Petitioners' arguments that the ordinance constitutes a taking in two different [*535] ways, by physical occupation and by regulation, are not separate *claims*. They are, rather, separate *arguments* in support of a single claim -- that the ordinance effects an unconstitutional taking. Having raised a taking claim in the state courts, therefore, petitioners could have formulated any argument they liked in support of that claim here.

LEdHN[16] [16]HN13 A litigant seeking review in this Court of a claim properly raised in the lower courts thus generally possesses the ability to frame the question to be decided in any [****28] way he chooses, without being limited to the manner in which the question was framed below. While we have on occasion rephrased the question presented by a petitioner, see,

e. g., Ankenbrandt v. Richards, 502 U.S. 1023, 116 L. Ed. 2d 764, 112 S. Ct. 855 (1992), or requested the parties to address an important question of law not raised in the petition for certiorari, see, *e. g., Payne v. Tennessee, 498 U.S. 1080, 112 L. Ed. 2d 1038, 111 S. Ct. 1031 (1991)*, by and large it is the petitioner himself who controls the scope of the question presented. The petitioner can generally frame the question as broadly or as narrowly as he sees fit.

LEdHN[17][⬆] [17]***HN14***[⬆] The framing of the question presented has significant consequences, however, because under this Court's Rule 14.1(a), "only the questions set forth in the petition, or fairly included therein, will be considered by the Court." While "the statement of any question presented will be deemed to comprise every subsidiary question fairly included therein," *ibid.*, we ordinarily do not consider questions outside those presented in the petition for certiorari. See, *e. g.*, *Berkemer v. McCarty, 468 U.S. 420, 443, n. 38, 82 L. Ed. 2d 317, 104 S. Ct. 3138 [**1533] (1984)*.This rule is prudential in nature, but we disregard it "only [****29] in the most exceptional cases," *Stone v. Powell, 428 U.S. 465, 481, n. 15, 49 L. Ed. 2d 1067, 96 S. Ct. 3037 (1976)*, where reasons of urgency or of economy suggest the need to address the unpresented question in the case under consideration.

LEdHN[18][⬆] [18]***HN15***[⬆] Rule 14.1(a) serves two important and related purposes. First, it provides the respondent with notice of the grounds upon which the petitioner is seeking certiorari, and enables [*536] the respondent to sharpen the arguments as to why certiorari should not be granted. Were we routinely to consider questions beyond those raised in the petition, the respondent would lack any opportunity in advance of litigation on the merits to argue that such questions are not worthy of review. Where, as is not unusual, the decision below involves issues on which the petitioner does *not* seek certiorari, the respondent would face the formidable task of opposing certiorari on every issue the Court might conceivably find present in the case. By forcing the petitioner to choose his questions at the outset, Rule 14.1(a) relieves the respondent of the expense of unnecessary litigation on the merits and the burden of opposing certiorari on unpresented questions.

Second, Rule 14.1(a) assists the Court [****30] in selecting the cases in which certiorari will be granted. Last Term alone we received over 5,000 petitions for certiorari, but we have the capacity [***171] to decide only a small fraction of these cases on the merits. To use our resources most efficiently, we must grant certiorari only in those cases that will enable us to resolve particularly important questions. Were we routinely to entertain questions not presented in the petition for certiorari, much of this efficiency would vanish, as parties who feared an inability to prevail on the question presented would be encouraged to fill their limited briefing space and argument time with discussion of issues other than the one on which certiorari was granted. Rule 14.1(a) forces the parties to focus on the questions the Court has viewed as particularly important, thus enabling us to make efficient use of our resources.

LEdHN[9B][⬆] [9B]We granted certiorari on a single question pertaining to the *Takings Clause*: "Two federal courts of appeal have held that the transfer of a premium value to a departing mobilehome tenant, representing the value of the right to occupy at a reduced rate under local mobilehome rent control ordinances, constitute[s] an impermissible [****31] taking. Was it error for the state appellate court to disregard the rulings and [*537] hold that there was no taking under the *fifth* and *fourteenth amendments*?" This was the question presented by petitioners. Pet. for Cert. i. It asks whether the court below erred in disagreeing with the holdings of the Courts of Appeals for the Third and Ninth Circuits in *Pinewood Estates of Michigan v. Barnegat Township Leveling Board, 898 F.2d 347 (CA3 1990)*, and *Hall v. Santa Barbara, 833 F.2d 1270 (CA9 1987)*, cert. denied, *485 U.S. 940, 99 L. Ed. 2d 281, 108 S. Ct. 1120 (1988)*. These cases, in turn, held that mobile home ordinances effected physical takings, not regulatory takings. Fairly construed, then, petitioners' question presented is the equivalent of the question "Did the court below err in finding no physical taking?"

HN16[⬆] Whether or not the ordinance effects a regulatory taking is a question *related* to the one petitioners presented, and perhaps *complementary* to the one petitioners presented, but it is not "fairly included therein." Consideration of whether a regulatory taking occurred would not assist in resolving whether a physical taking occurred as well; neither of the two questions is subsidiary [****32] to the other. Both might be subsidiary to a question embracing both -- Was there a taking? -- but they exist side by side, neither encompassing the other. Cf. *American Nat. Bank & Trust Co. of Chicago v. Haroco, Inc., 473 U.S. 606, 608, 87 L. Ed. 2d 437, 105 S. Ct. 3291 (1985)* (question whether complaint adequately alleges conduct of racketeering enterprise is not fairly included in [**1534]

question whether statute requires that plaintiff suffer damages through defendant's conduct of such an enterprise).

LEdHN[9C][] [9C]***LEdHN[19]***[] [19]Rule 14.1(a) accordingly creates a heavy presumption against our consideration of petitioners' claim that the ordinance causes a regulatory taking. Petitioners have not overcome that presumption. While the regulatory taking question is no doubt important, from an institutional perspective it is not as important as the physical taking question. The lower courts have not reached conflicting results, so far as we know, on whether similar mobile home rent [*538] control ordinances effect regulatory takings. ***HN17***[] They *have* reached conflicting results over whether such ordinances cause physical takings; such a conflict is, of course, a substantial reason for granting certiorari under this Court's Rule 10. Moreover, the conflict [****33] is between [***172] 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. Forum shopping is thus of particular concern. See *Azul Pacifico, Inc. v. Los Angeles, 948 F.2d 575, 579 (CA9 1991)* (mobile home park owners may file physical taking suits in either state or federal court). ***HN18***[] Prudence also dictates awaiting a case in which the issue was fully litigated below, so that we will have the benefit of developed arguments on both sides and lower court opinions squarely addressing the question. See *Lytle v. Household Mfg., Inc., 494 U.S. 545, 552, n. 3, 108 L. Ed. 2d 504, 110 S. Ct. 1331 (1990)* ("Applying our analysis . . . to the facts of a particular case without the benefit of a full record or lower court determinations is not a sensible exercise of this Court's discretion"). In fact, were we to address the issue here, we would apparently be the first court in the Nation to determine whether an ordinance like this one effects a regulatory taking. We will accordingly follow Rule 14.1(a), and consider only the question petitioners raised in seeking certiorari. We leave the regulatory taking [****34] issue for the California courts to address in the first instance.

IV

We made this observation in *Loretto:*

> "Our holding today is very narrow. We affirm ***HN19***[] the traditional rule that a permanent physical occupation of property is a taking. In such a case, the property owner entertains a historically rooted expectation of compensation, and the character of the invasion is qualitatively more intrusive than perhaps any other category of property regulation. We do not, however, question the equally substantial authority upholding a State's [*539] broad power to impose appropriate restrictions upon an owner's *use* of his property." *458 U.S. at 441*.

LEdHN[1H][] [1H]We respected this distinction again in *Florida Power*, where we held that ***HN20***[] no taking occurs under *Loretto* when a tenant invited to lease at one rent remains at a lower regulated rent. *Florida Power, 480 U.S. at 252-253*. We continue to observe the distinction today. ***HN21***[] Because the Escondido rent control ordinance does not compel a landowner to suffer the physical occupation of his property, it does not effect a *per se* taking under *Loretto*. The judgment of the Court of Appeal is accordingly

Affirmed.

Concur by: BLACKMUN; SOUTER

Concur

JUSTICE [****35] BLACKMUN, concurring in the judgment.

I agree with the Court that the Escondido ordinance is not a taking under this Court's analysis in *Loretto v. Teleprompter Manhattan CATV Corp., 458 U.S. 419, 73 L. Ed. 2d 868, 102 S. Ct. 3164 (1982)*. I also conclude that the substantive due process and regulatory taking claims are not properly raised in this Court. For that reason, I, unlike the Court, do not decide whether the regulatory taking claim is or is not ripe, or which of [**1535] petitioners' arguments would or would not be relevant to such a claim.

[***173] JUSTICE SOUTER, concurring in the judgment.

I concur in the judgment and would join the Court's opinion except for its references to the relevance and significance of petitioners' allegations to a claim of regulatory taking.

References

Supreme Court's construction and application of

Supreme Court Rule 14 (and similar predecessor provisions), prescribing requirements of petition for certiorari

27 Am Jur 2d, Eminent Domain 157-169; 32A Am Jur 2d, Federal Practice and Procedure 769; 50 Am Jur 2d, Landlord and Tenant 1248-1252; 54 Am Jur 2d, Mobile Homes, Trailer Parks, [****36] and Tourist Camps 7, 15, 16

2 Federal Procedure, L Ed, Appeal, Certiorari, and Review 3:192; 7 Federal Procedure, L Ed, Condemnation of Property 14:1-14:3

2 Federal Procedural Forms, L Ed, Appeal, Certiorari, and Review 3:861-8:871

11A Am Jur Pl & Pr Forms (Rev), Federal Practice and Procedure, Forms 2493-2495

4 Am Jur Proof of Facts 649, Eminent Domain

USCS, Constitution, Amendment 5; USCS Court Rules, United States Supreme Court Rules, Rule 14

L Ed Digest, Appeal 744.5, 1087.5(2), 1293; Eminent Domain 103

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Index to Annotations, Certiorari; Eminent Domain; Mobile Homes, Trailer Parks, and Tourist Camps; Rent

Annotation References:

Supreme Court's views as to what constitutes "taking," within meaning of Fifth Amendment's prohibition against taking of private property for public use without just compensation. 89 L Ed 2d 977.

What issues will the Supreme Court consider, though not, or not properly, raised by the parties. 42 L Ed 2d 946.

Validity and construction of statute [****37] or ordinance establishing rent control benefit or rent subsidy for elderly tenants. 5 ALR4th 922 .

Maintenance or regulation by public authorities of tourist or trailer camps, motor courts, or motels. 22 ALR2d 774.

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