No. 24-986

IN THE

Supreme Court of the United States

MENDOCINO RAILWAY,
A CALIFORNIA CORPORATION,

Petitioner,

v.

JACK AINSWORTH, EXECUTIVE DIRECTOR,
CALIFORNIA COASTAL COMMISSION, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

BRIEF OF *AMICUS CURIAE* WESTERN MANUFACTURED HOUSING COMMUNITIES ASSOCIATION IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Under *Colorado River Water Conservation District v. United States*, 424 U.S. 800 (1976), a district court can abstain from a federal case in deference to a parallel state court action only in "exceptional circumstances" and with "the clearest of justifications."

But the lower courts' application of the doctrine has been a story of confusion and unpredictability.

The doctrine has even been described as "dangerous, unprincipled, and unfair," and in tension with the separation of powers, because lower courts have too easily abdicated their "virtually unflagging obligation" to "exercise the jurisdiction given them" based on the weighing of vague and subjective factors that differ across circuits. *Id.* at 817.

Should the Court resolve this conflict and require unswerving adherence to federal law to hear and decide federal question cases?

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IDENTITIES AND INTERESTS OF *AMICUS CURIAE*[1]

Western Manufactured Housing Communities Association ("WMA") is a nonprofit organization created in 1945 for the exclusive purpose of promoting and protecting the interests of owners, operators, and developers of mobilehome parks in California. WMA is a statewide trade association whose members are largely mobilehome park owners who collectively own, operate and control over 194,000 mobile-home spaces in California.

WMA has over 1,600 member parks located across all of California's 58 counties. In total, there are 4,846 mobilehome communities, with 372,093 homes.[2] Manufactured housing fills an important position in the milieu of housing choice. The official policy of the State of California is also to advance the interests in manufactured housing.[3] WMA's activities include representation before

1. Pursuant to this Court's Rule 37.2, counsel for the parties have been provided with timely notice of intent to file this brief. Pursuant to Rule 37.6, no party, or counsel for any party, authored this brief in whole in or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief, and no person other than amici, their members, or their counsel have made a monetary contribution to this brief's preparation or submission.

2. California Housing and Community Development, March 2004.

3. *E.g.*, *Health and Safety Code* § 50007.5 (this section declares that manufactured housing can provide a source of decent, safe, and affordable shelter for persons and families of low and moderate income. The Legislature intends to encourage the increased affordability and availability of manufactured housing for persons

the California state legislature, regulatory agencies and local elected officials.

WMA's representation of mobilehome park owners is particularly relevant to further advance its mission objective. Mobilehome resident factions constitute powerful voting blocs dominant in any legislative setting. As subjects of a ruling majoritarian faction, mobilehome park owners must vigilantly protect the avenues of relief that remain: the federal judiciary. Uncertainty of traction in the federal courts threatens a life-line to securing that impartial justice for California park owners. Madisonian checks and balances do not work against a majoritarian faction in local government setting.

INTRODUCTION AND SUMMARY OF ARGUMENT

Federal District courts have "the virtually unflagging obligation . . . to exercise the jurisdiction given them." Colorado River Water Conservation District v. United States, 424 U.S. 800, 817 (1976). Federal court trial jurisdiction presupposes, at bottom, the foreseeable coexistence of concurrent jurisdiction. Congress provides

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and families of low and moderate income); *California Government Code* §65580 (subd. (a) declares, "[T]he availability of housing is of vital statewide importance, and the early attainment of decent housing and a suitable living environment for every California family is a priority of the highest order"); the term "residential development" includes manufactured homes); *Health and Safety Code* § 18551 (section (a)(4) provides that once a manufactured or mobile home is installed on a permanent foundation, on property which is owned (or in some cases leased) by the home owner, the home is a fixture to the real property . . .).

federal courts with jurisdiction of the federal question; Congress offers no judicially-created authority to generate exceptions *sua sponte*.

Amicus suggests that federal courts exceed their powers by constructing analytical escape routes from the plain duty of assuming explicitly-defined jurisdiction. Federal jurisdiction should inherently exclude considering intrusion of congressionally unarticulated grounds for abstention: constitutional originalism might counsel that the office of the courts does not include performance of legislative functions. Congressional pronouncements of jurisdiction would appear to be at palpable variance with additional content added by the courts.

Accordingly, the federal courts are legislatively directed to exercise jurisdiction in the face of "the pendency of an action in the state court." *Id.* at 817. And creation of inferior trial jurisdiction manifests a clear intention to offer alternatives together or separately. And there the inquiry must end. Together or separately, federal courts guarantee the "primacy of the federal judiciary in deciding questions of federal law."

ARGUMENT

I. THE COURT SHOULD STOP THE CREEP OF IMPROPER CIRCUMLOCUTION OF JURISDICTION AND RESOLVE THE MANIFEST CONFUSION ABOUT CONCURRENT JURISDICTION

The federal courts have the primary responsibility to interpret and enforce federal law and regulations. On

the other hand, state courts ideally exist, in 50 separate states, to attend to the functions of a state judiciary and state constitution. The justice system in this country is created with the possibility of concurrent jurisdiction of various stripes. Congress expects its edicts to be followed, not lost in confusing provincial interpretations at odds with the separation of powers.

But parallel litigation poses challenges. These challenges have been resolved differently across the circuits with evident conflicts. *Amicus* contends that federal courts have shied away from the duty to exercise jurisdiction in accordance with "the virtually unflagging obligation . . . to exercise the jurisdiction given them." *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 817 (1976).

When the same core issues are pending in two separate cases—one in state court and the other in federal court— Congress has deemed to have understood and considered the possibility of inherent conflict. But in such cases, Congress has, by its silence, implicitly directed that no consideration be added to dilute or attenuate judicial powers to hear and decide federal questions. States must yield.

Nonetheless, and while protecting the sanctity of federal jurisdiction with the rhetorical flourish of masterfully forceful prose, the court has provided leeway for consideration of other just interests. In exceptional cases. The Court did so in handing down *Colorado River, supra,* 424 U.S. 800 (1976). In exceptional cases, a court may stay or dismiss (depending where you are standing at the moment) a federal action when a state court is considering the same issue.

The Courts do not agree about the powers Congress has provided. First, the court addresses whether "the parallel statecourt litigation will be an adequate vehicle for the complete and prompt resolution of the issues between the parties." *Moses H. Cone Merril Hosp. v. Mercury Constr. Corp.*, 460 U.S. 1, 28 (1983). The courts have dramatically contrasting opinions on this point. According to the Ninth Circuit, *Colorado River* does not authorize a stay "[w]hen one possible outcome of parallel state court proceedings is continued federal litigation."

But the Ninth Circuit also noted the "conflicting authority on the question" of how to analyze *Colorado River's* "threshold requirement'" of "parallelism." The courts of appeals have taken disparate approaches to *Colorado River's* parallelism test: some courts correctly recognize its intended flexibility, while others impose narrow and unjustified constraints on its operation. These differing approaches produce strikingly different results in comparable cases across the circuits.

Here, suitability for re-hearing of *Colorado River* is ideal. We have a recurring question of federal law. It has splintered into a splay of disparate opinions. This Court should offer a helpful hand. Given the prevalence of parallel proceedings, federal courts regularly search for the extraordinary circumstances rendering coalescence of factors for a stay or dismissal per C*olorado River.* And clear answers are unintelligible now.

An example. If courts are to hear and decide parallel cases including cases with concurrent jurisdiction, the factors considered should be without regard to who filed first. While contemporaneous filing may reduce

consideration of that factor to a nonissue, the question is why it should be an issue in any event. Federal courts have a "virtually unflagging" duty to exercise their jurisdiction. *Mata v. Lynch,* 576 U.S. 143, 150 (2015) (quoting *Colorado River*, 424 U.S. at 817).

Still, abstention from federal review is an established practice in a variety of circumstances and federal courts have additional authority to address "the contemporaneous exercise of concurrent jurisdictions, either by federal courts or by state and federal courts." *Colorado River*, 424 U.S. at 817.

Colorado River found one such circumstance based on a "number of factors." *Id.*, at 819. In *Moses H. Cone*, a hospital and a contractor agreed that either could seek arbitration. *Id.* at 4-5. A dispute arose. The hospital filed a state court action, while alleging there was no right to arbitrate. Believing that the best defense is a good offense, the contractor filed a federal federal action in diversity. The district court stayed the federal action. The court of appeals reversed. *Id.* at 7-8. This court affirmed.

The Court found "no showing of the requisite exceptional circumstances to justify" a stay. *Id.* at 19. Who filed first was also a subordinate priority. Since a race to the courthouse may be deceitfully motivated to capitalize on some caliginous strategic tactic or maneuver, the question of timing "is to be applied in a pragmatic, flexible manner"—not by comparing filing dates. *Id.* at 21-22. Of paramount significance was that the dispositive issue was a matter of federal law. *Id.* at 24-25. Moreover, at bottom, Congress did not specify that federal jurisdiction was subject to the frailty of the timing of commencement,

or the defeasance of rights based upon a timely file action within the applicable statute of limitations.

The rule should not be who filed first, but which forum will decide the dispute first? In federal courts in California, actions are decided more quickly than in state court. As discussed, *infra*, California courts are in a constant battle over funding and resources. Federal actions, a little more than a year. In state court? Civil actions take 5 years.

Why should it matter when a state court action was filed, *if a federal action could be filed 4 years later and still be finalized before state trial*? Utilizing the "time to trial" test, any backlog in California courts, to the extent there is concurrent jurisdiction cases, would quickly be reduced or eliminated by more timely trials in federal court.

Hence, the Court emphasized that a factor counseling against a stay was "the probable inadequacy of the state court proceeding to protect [the contractor's] rights." *Id.* at 26. Further, there was "substantial room for doubt" that the state court could grant complete relief. It was not clear that it had the power to compel arbitration, Federal Arbitration Act ("FAA"), §4. *Id.* at 26-27.

> "If the state court stayed litigation pending arbitration but declined to compel the Hospital to arbitrate, [the contractor] would have no sure way to proceed with its claim except to return to federal court to obtain a §4 order—a pointless and wasteful burden on the supposedly summary and speedy procedures prescribed by the Arbitration Act." *Id.* at 27.

The ruling would apply equally to either a stay or dismissal.[4]

In sum, many cases including *Moses H. Cone* reflect the circuit conflict at issue concerning whether a *Colorado River* stay should only be granted in case of extraordinary circumstances inclusive of foreseeable situations in which there is concurrent jurisdiction, and whether or not the stay should be issued at all in the case of a federal question. With all respect, this court should hear and resolve this conflict.

Article III of the Constitution vests the federal judicial power in the Supreme Court "and in such inferior Courts as the Congress may from time to time ordain and establish"[5] and extends that judicial power to nine different categories of cases and controversies.[6] The "ordain and establish" language makes clear that Article III does not mandate the creation of the inferior federal courts but instead leaves the decision of whether to create such inferior courts to Congress. See generally, The

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4. *Id.* at 27-28 ("[w]hen a district court decides to dismiss or stay a case under *Colorado River*, it presumably concludes that the parallel statecourt litigation will be an adequate vehicle for the complete and prompt resolution of the issues between the parties." *Id.* at 28. 'If there is any substantial doubt as to this, it would be a serious abuse of discretion to grant the stay or dismissal at all." *Id.* "Thus, the decision to invoke *Colorado River* necessarily contemplates that the federal court will have nothing further to do in resolving any substantive part of the case, whether it stays or dismisses." *Id.*

5. U.S. CONST. art. III, § 1.

6. *See* U.S. CONST. art. III, § 2, cl. 1.

Common Law of Federal Question Jurisdiction, 60 Ala. L. Rev. 895, 900 (1997).

See Charles L. Black, Jr., The Presidency and Congress, 32 WASH. & LEE L. REV. 841, 845 (1975) ("Congress is free not only to refrain from establishing a lower federal judiciary, but to change its mind about this matter, or about any of the details of this matter, 'from Time to Time.'"); Gerald Gunther, Congressional Power to Curtail Federal Court Jurisdiction: An Opinionated Guide to the Ongoing Debate, 36 STAN. L. REV. 895 (1984), at 914.

Article III clearly leaves to Congress the decision whether to create inferior federal courts. *See,* The Common Law of Federal Question Jurisdiction, 60 Ala. L. Rev. 895, 900. Bestowing Congress with establishment of inferior federal courts was a compromise at the Constitutional Convention. To the point, there there was disagreement on need for inferior federal courts Other members opposed inferior federal courts claiming review by the Supreme Court would be adequate. And, federal courts would displace state courts.[7]

Some argued that inferior federal courts were necessary to provide an unbiased forum to ensure the enforcement of federal and constitutional

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7. *Romero v. International Terminal Operating Co.* (1959) 358 U.S. 354, 361, fn. 9 [79 S.Ct. 468, 474, 3 L.Ed.2d 368, 376]) ("The original clause calling for the establishment of inferior tribunals was defeated in the Convention. 1 Farrand, Records of the Federal Convention (1911), 125. A compromise vesting power in Congress to establish such tribunals was agreed to").

rights.[8] Absent inferior courts they posited, the Supreme Court would be overwhelmed with appeals, and that those appeals would be frequently futile because the Court could only remand back to state court, to impose the same judgment. See HART & WECHSLER, *supra*, at 8. See, [T]he Common Law of Federal Question Jurisdiction, *supra*, 60 Ala. L. Rev. 895, 900.

The compromise was to leave it to Congress's judgment whether to create inferior federal courts to ensure the uniformity and supremacy of federal and constitutional law or to leave enforcement of federal and constitutional rights to the state courts.

The Judiciary Act of 1875 effected an extensive enlargement of the jurisdiction of the lower federal courts. Now,

> " . . . All suits of a civil nature at common law or in equity, . . . arising under the Constitution or laws of the United States, or treaties made, or which shall be made, under their authority . . . ."

Federal question jurisdiction was granted in the abortive Act of Feb. 13, 1801, § 11, 2 Stat. 92, repealed by Act of March 8, 1802, 2 Stat. 132. *Romero v. International Terminal Operating Co.* (1959) 358 U.S. 354, 363, fn. 1717 [79 S.Ct. 468, 475, 3 L.Ed.2d 368, 377].

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8. *See* RICHARD H. FALLON, JR., DANIEL J. MELTZER & DAVID L. SHAPIRO, HART AND WECHSLER'S THE FEDERAL COURTS AND THE FEDERAL SYSTEM 8 (5th ed. 2003) [hereinafter HART & WECHSLER]; "1 THE RECORDS OF THE FEDERAL CONVENTION OF 1787, at 124 (Max Farrand ed., revised ed. 1937)" cited in [T]he Common Law of Federal Question Jurisdiction, 60 Ala. L. Rev. 895, 900.

> "From 1875 to 1950 there is not to be found a hint or suggestion to cast doubt on the conviction that the language of that statute was taken straight from Art. III, § 2, cl. 1, extending the judicial power of the United States "to all Cases, in Law and Equity, arising under this Constitution, the Laws of the United States, and Treaties made, or which shall be made, under their Authority." Indeed what little legislative history there is affirmatively indicates that this was the source."

Romero, id., 358 U.S. 354, 363-364 [79 S.Ct. 468, 475, 3 L.Ed.2d 368, 377].

As to federal questions, *see*, *Holmes Group, Inc. v. Vornado Air Circulation Sys.* (2002) 535 U.S. 826, 830 [122 S.Ct. 1889, 1893, 153 L.Ed.2d 13, 19-20] ("[T]he well-pleaded-complaint rule has long governed whether a case "arises under" federal law for purposes of §1331 . . . ").

Congress delineates jurisdiction, the courts implement Congress' direction. A federal court should not set out to ignore the rails on which it travels.

> "The duty of the courts in interpreting jurisdictional statutes is, as with all statutes, to implement Congress's intent as embodied in that statute."

Stewart v. Kahn, 78 U.S. (11 Wall.) 493, 504 (1870)

See, *Kline v. Burke Constr.* Co., 260 U.S. 226, 234 (1922) (where party exercises right to invoke federal jurisdiction,

federal court "bound to take the case and proceed to judgment"); *Mondou v. New York, N.H. & Hartford R.R.*, 223 U.S. 1, 58 (1912) ("existence of jurisdiction creates an implication of duty to exercise it"); *Burgess v. Seligman*, 107 U.S. 20, 34 (1883) (because object of federal courts is to provide independent tribunal, dereliction of duty not to exercise independent judgment in cases not foreclosed by previous adjudication); *Knox County Comm'rs v. Aspinwall*, 65 U.S. (24 How.) 376, 385 (1861) (no court having proper jurisdiction and process can justify turning its suitors over to another tribunal to obtain justice); *Hyde v. Stone*, 61 U.S. (20 How.) 170, 175 (1858) (federal courts bound to proceed to judgment and to afford redress in every case to which their jurisdiction extends; cannot abdicate authority or duty in favor of another jurisdiction); *Bank of United States v. Deveaux,* 9 U.S. (5 Cranch) 61, 87 (1809) ("The duties of this court, to exercise jurisdiction where it is conferred, and not to usurp it where it is not conferred, are of equal obligation."). Linda S. Mullenix, A Branch Too Far: Pruning the Abstention Doctrine, 75 Geo. L.J. 99 (1986) at 102, *n.*10.

This case gives the court the perfect opportunity to resolve manifest confusion among the circuits; to provide clear definition to reign in a meandering analytical diversity of good faith miscues so a unified doctrine can be applicable in all circuits. To do so would also obviate the continuing criticism of actions in excess of jurisdiction of the circuits.

> Presumably no one would deny that a federal court cannot legitimately invalidate a federal statute solely because of its unwise policies, or because it would make judges work harder than they believe they should, or because the

> judges themselves would not have enacted such legislation. Such behavior by the judiciary would amount to a blatant—and indefensible—usurpation of legislative authority. At most, the judiciary possesses authority to overturn federal legislation because it is unconstitutional, not because the judiciary considers it unwise. Yet, in a sense, the abstention doctrines amount to such usurpation.

Abstention, Separation of Powers, and the Limits of the Judicial Function., 94 Yale L.J. 71, 72.

II. THE COURTS SHOULD BE REQUIRED TO HEAR AND DECIDE FEDERAL QUESTIONS WITHOUT USURPATION OF LEGISLATIVE POWER

One may not fairly criticize a litigant for pursuing available jurisdiction any more than passing through a door meant to be opened.

> "We yet like to believe that wherever the Federal courts sit, human rights under the Federal Constitution are always a proper subject for adjudication, and that we have not the right to decline the exercise of that jurisdiction simply because the rights asserted may be adjudicated in some other forum."

Stapleton v. Mitchell, 60 F.Supp. 51 (D.Kan. 1945), 55; *see* McNeese v. Board of Education, 373 U.S. 688, at 674, *n.* 6.[9]

9. "It is immaterial whether respondents' conduct is legal or illegal as a matter of state law. *Monroe v. Pape*, *supra*, ...

Thus, the notion of describing the right to pursue federal question jurisdiction, in a federal court, is not fairly ascribed with the accusatory "forum shopping" label, which rings of negative and culpable wrongdoing. "Forum shopping" refers to a caliginous channeling to a pre-selected choice, unlike the neutral term "forum selection" or "option." That is a far cry from describing the exercise of a right to federal relief in a federal court.

Should federal courts be free to shape (*qua* reject) federal court jurisdiction as prescribed by Congress (the legislative branch)? Martin H. Redish would say no:

> . . . little would be lost and much gained by simple judicial adherence to the valid legislative commands of existing federal substantive and jurisdictional enactments. Even if we were to conclude that unwavering judicial enforcement of this legislation actually would cause serious social harm, the recourse certainly should not be to the equivalent of judicial civil disobedience, but rather to the democratically ordained legislative process.

Redish, Abstention, Separation of Powers, and the Limits of the Judicial Function., 94 Yale L.J. 71, 75.

The point is that "Democratic principles clearly prohibit the judiciary from effectively repealing the statutory structure through 'total abstention.' "

Such claims are entitled to be adjudicated in the federal courts." *McNeese v. Board of Education* (1963) 373 U.S. 668, 674.

> One could persuasively argue that whatever social harms may flow from federal judicial enforcement of federal rights against state entities cannot—short of a finding of unconstitutionallty—justify judicial abandonment of federal legislation.

Redish, Abstention, Separation of Powers, and the Limits of the Judicial Function., 94 Yale L.J. 71, 74.

While fairly imaginable that Congress would implicitly delegate authority to modify or limit a substantive statutory right or a jurisdictional grant, "it is absurd to imagine that Congress would implicitly grant the court authority effectively to repeal such legislation."

> "The exercise of such authority would render pointless the entire legislative process."

94 Yale L.J. 71, 78.

> "The fact that Congress theoretically could delegate to the courts the power to modify otherwise unlimited legislation, however, does not mean that Congress has actually done so."

94 Yale L.J. 71, 78.

When a legislative body enacts legislation, one must assume, absent strong countervailing evidence, that that body intended the courts to perform neither more nor less than their traditional function in a constitutional democracy—to interpret the language and intent of the statute, to enforce it as so construed, and to

invalidate or ignore it only when they find that the law is unconstitutional." *Id.*, 94 Yale L.J. 71, 78-79.

III. CONGRESS CHOSE FEDERAL COURTS FOR FEDERAL QUESTIONS. IN CALIFORNIA, FOR GOOD REASON

> " . . . It is surely plausible to argue that federal courts offer greater experience, familiarity, and sensitivity toward federal interests and constitutional issues than do state courts").

See Neuborne, The Myth of Parity, 90 Harv. L. Rev. 1105 , 1119–1120 (1977).

The unpopular political minority is especially sensitive to the potential negative repercussions of seeking to enforce federal constitutional rights in a state court.

Some state courts, like California's, are endemicly plagued with budgets and vulnerable resources threatening the very administration of justice. These many conflicts between the judiciary and the legislature result in closure and threatened diminution of services. These concerns make administration of justice in California more a dare than a challenge.

> These budget reductions have led to the closure of over fifty courthouses and the dismissal of approximately four thousand court employees, . . . some civil cases taking up to five years to reach trial, and many individuals have faced prolonged wait times for divorce settlements or landlord-tenant disputes.

Nila Daniels, MPH, California Superior courts crisis, (2023) https://www.ebsco.com/research-starters/law/california-superior-courts-crisis

The "crisis" is more serious in rural areas, where the effect of court closures increases travel to access legal services that remain.

> "As a result, there are growing concerns about violations of citizens' constitutional rights to a speedy trial. Efforts to improve the situation include modernizing court technology and case management systems, but the judicial branch remains underfunded, constituting only 1.4% of California's budget for the fiscal year 2016–17."

Id.

According to EBSCO (www.ebsco.com), the research reveals a crisis in the California court system at the present time.[10] Observers claim therefore, that violations

10. https://www.ebsco.com/research-starters/law/california-superior-courts-crisis. The bibliography for this report is:

Broder, Ken. "Marin Is Only County Court System Not Projecting Double-Digit Funding Shortfall." AllGov California. AllGov.com, 8 Apr. 2016. Web. 17 Aug. 2016.

Dolan, Maura. "Cutbacks in California Court System Produce Long Lines, Short Tempers." Los Angeles Times. Los Angeles Times, 10 May 2014. Web. 4 June 2016.

"In Focus: Judicial Branch Budget Crisis." Courts.ca.gov. Judicial Council of California, 2016. Web. 4 June 2016.

Lagos, Marisa. "Cutbacks Still Felt Deeply in California's Civil Courts." KQED News. KQED, 11 Mar. 2015. Web. 17 Aug. 2016.

of speedy trial guarantees are occurring. "In some cases, plaintiffs have died waiting on court dates, and some people have endured long wait times to settle a divorce, file a small claim, or argue a landlord-tenant dispute." *Id.*

In Contra Costa County, unprocessed divorces disable remarriage. In Los Angeles County, a traffic citation trial is set a year in advance. In Redwood City, the "backlog of cases has been so severe that at one point there was a pile of thirty thousand cases stacked on the floor of the clerk's office." *Id.*

In 2015, Kern County " . . . The county courthouse was closed, and another nearby courthouse was open one day a week. . . ."

> A Judicial Council of California investigation into California's superior courts systems revealed startling inefficiencies… An NBC News report noted, for example, that a civil divorce in San Francisco has taken up to five months compared to the expected four to six weeks; family law cases have taken eight months to be put on the court calendar in Sonoma County; and an uncontested divorce

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Mintz, Howard. "California Courts Get Slight Boost in Governor's Budget." Mercury News. Digital First Media, 14 May 2015. Web. 4 June 2016.

O'Leary, Kevin. "And Justice for Some: L.A.'s Shrinking Court System." Time. Time, 21 Mar. 2010. Web. 17 Aug. 2016.

Stock, Stephen. "California Superior Courts in Crisis." NBC Bay Area. NBCUniversal Media, 23 July 2013. Web. 4 June 2016.

> in Alameda County took a year and six months to complete.

Id.

See generally, Rubenstein, William B,, "The Myth of Superiority" (1999). 16 Constitutional Commentary 599.[11] A preference for federal courts reflect that federal courts "have largely been dominated by conservative Republican appointees." *Id.*, at 600 (n.5, "by 1993, Republican presidents had appointed 75% of the sitting federal judges"). But it appears this speculation is not substantiated in fact.[12]

Can state courts be trusted to protect federal rights?" *Id.*, at 600. See, Burt Neuborne, The Myth of Parity, 90 Harv. L. R. 1105 (1977). He gave a ringing endorsement of the superiority of the federal court. *Id.*, at 601. That endorsement was based upon his "practice experience." Neuborne, at 1115. He argued there were 3 reasons supporting a preference for federal court. Paraphrasing, the level of technical competence is superior. And the federal judiciary's insulation from majoritarian pressures . . . *Neuborne,* at 1120-21. Federal judges do not stand for election. This assures a greater degree of independence.

> "We studied more than 2,000 cases decided over the 33-year period between 1979 and 2012. Our review indicates that state courts tend in certain circumstances to provide less

11. https://scholarship.law.umn.edU/concomm/1145

12. *Id.*, n.5. Citing Sheldon Goldman, Bush's Judicial Legacy: The Final Imprint, 76 Judicature 282, 297 (1993).

> protection to private property than Supreme Court doctrine requires, though they (and state legislatures) occasionally provide more. An apt generalization about state court decisions is that they regularly reflect ignorance of (or indifference to) Supreme Court teachings, which place virtually no significant constraints on state activities regarding property in any event."

AN EMPIRICAL STUDY OF IMPLICIT TAKINGS, 58 Wm. & Mary L. Rev. 35, http://ssrn.com/abstract=2779858.

Finally, federal judges are subject to selection and Senate confirmation. *Supra*, 94 Yale L.J. 71, 73, *n.*1, at 2-3. This is not comparable to a County popularity contest.

California problems may be difficult to discern but the volume of media reports reveal credible and deep-seated problems. A brief review of California's situation covering the last 3 decades, reflects an unrelenting vulnerability to administration of justice. In summary:

In 1988: Steve Olson, "Capital", Turlock Journal, September 1, 1988, www.newspapers.com/image/110-293-7309/ (" . . . a spring income tax shortfall put Gov. George Deukmejian's proposed budget out of balance . . . the Legislature made $1 billion in budget cuts, including the trial court funding program . . . ")

The California judiciary appears vulnerable to coercive legislative pressures to secure favorable decisions as a condition to adequate funding. Indeed, the Chief Justice reportedly accused the legislature of retaliating for unfavorable decisions. The natural implication is a

lack of public confidence in the fidelity of the judiciary. See, "Lucas criticizes court budget cuts" Thousand Oaks Star, October 5, 1992, P. 13 (B5), www.newspapers.com/image/925590779/

> SAN FRANCISCO—Chief Justice Malcolm Lucas . . . remarks were a clear reference to attempts by legislative budget committees this year to cut the state Supreme Court's funding by 38 percent . . .

(equal to reductions in the legislature's operating budget upheld by the State's high court).

In California, state courts are often reported to lack resources. State court judges in the Inland Empire may quietly ask counsel for "hard" copies of secondary sources of authority because the court computer accounts have no plan access.

Retirement and salary of judges is vulnerable and at risk. In 2004, "Supreme Court chief warns against cuts" the Tribune (San Luis Obispo) March 24, 2004, P.17, https://www.newspapers.com/image810238890/

> "Gov. Arnold Schwarzenegger proposes to trim $37.7 million to lower the judicial branch's budget to $2.2 billion next year, and to drop another estimated $100 million by not funding judges' retirement and salary increases and the increased costs of court security."

"Supreme Court chief: budget cuts endanger public safety" Turlock Journal, March 25, 2004, P. 3 www.newspapers.com/imageone149061389/

> SACRAMENTO—Public safety will be jeopardized if lawmakers make any more cuts ... Chief Justice Ronald M. George warned legislators.

In 2011, Samantha Yale Scroggin, "Courts brace for more budget cuts" August 11, 2011, The Lompoc Record, page A2, https://www.newspapers.com/image/483160971/

> " . . . 40 percent of the court's work force is being laid off, 25 out of 63 courtrooms are being closed and the civil division is nearly being put out of business."

Howard Mintz, "Proposed court budget cuts causing stir" January 31, 2011, Oakland Tribune, page A6 https://www.newspapers.com/image/896668608/

The judges are sidetracked with distractions involving merely keeping the doors open.

> "How we actually keep our local courts open to the public under these circumstances is unknown." — Maryanne Gilliard, Sacramento Superior Court Judge"

David F De Alba, "with severe budget cuts, states courts are in crisis," the Sacramento Bee, May 3, 2012, P. A13 www.newspapers.com/image635257673/

> "California courts are in crisis. ¶In Sacramento Superior Court, we have lost almost 200 positions."

Raul Hernandez, "local court budget cut may reach $14M," Ventura County Star, June 14, 2012, page 121, https://www.newspapers.com/image/778230732.

> "Budget cuts in Ventura County were anticipated to reach $14 million. No further court reporting services for civil trials . . . "

"Courts," Oakland Tribune, July 18, 2011, Page 12 www.newspapers.com/image/896013857

> "David Yamasaki, the court's chief executive, said it already takes days for court employees to answer phone calls from the public and weeks to finalize court judgments that once took a matter of days."

Jim Morin, "Court Budget Cuts Impact Lives" the Fresno Bee, June 5, 2012, page a11 newspapers.com/image/663131576

> "The Fresno Superior Court recently announced that the courthouses in Clovis, Coalinga, Firebaugh, Kingsburg, Reedley, Sanger and Selma will permanently close this summer."

In 2013: *See,* "Court", Desert Dispatch, February 14, 2013, P. 8

> "During the past five years, 46 courthouses and 164 courtrooms have closed, with nearly 2,000 judicial employees laid off, according to Consumer Attorneys of California."

See, Sharon Bernstein, Sacramento Bee, "California courts are underfunded, leading to delays in cases, chief justice says" (January 16, 2025)[13] *according to Bernstein,* "California's court system faces an ongoing budget crunch that has contributed to a shortage of judges and slowed the progress of cases, the chief justice of the California Supreme Court said Wednesday."

> The state judiciary's budget of about $5 billion was cut by $97 million amid belt-tightening last year, and while Gov. Gavin Newsom's initial budget proposal aims to replace about half of that in 2025, the money is not yet assured, Chief Justice Patricia Guerrero told reporters at a briefing Wednesday at the court's Earl Warren Building in San Francisco.

Id.

> ¶There is also not enough money to hire lawyers to represent indigent clients, particularly those facing capital punishment who must appeal their cases at three levels in the state system — trial courts, appellate courts and the supreme court — before they can ask a federal court to review their cases, Guerrero said.

One example reflecting a vivid contrast between treatment of state and federal courts is found in

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13. The cited article originally published in the Sacramento Bee is behind a pay wall; and mirrored to the following: https://www.yahoo.com/news/california-courts-underfunded-leading-delays-223410440.html.

Westminster Mobile Home Park Owners' Assn. v. City of Westminster (1985) 167 Cal.App.3d 610. A group of mobilehome park owners challenged a novel rent control-arbitration hybrid ordinance in Orange County Superior Court, on state and federal constitutional grounds.

The 1981 Westminster ordinance was a constant source of litigation until 1985, during the halcyon period between birth of the word processor and page limits. So voluminous were the court filings that a court clerk commandeered a wayward grocery basket to manage all the pleadings. The grocery basket went missing a week before the preliminary injunction hearing, requiring a re-filing of all the pleadings from all parties.

The ordinance was heavily litigated. It survived "18 tests of constitutionality. . . ." Los Angeles Times, March 27, 1985, page 62 ("Controls on Rent Hikes Are Ended—Owners of Mobile Homes Loose Fight in Westminster"). The ordinance, fatally, relied for review upon standards to vacate an arbitration award, not substantial evidence review of agency action. *California Code of Civil Procedure* §1094.5.

The 4th District Court of Appeal struck down the law. But the chief justice depublished the precedent without explanation. This relegated park owners and tenants throughout California to continuing uncertainties. Eight years later, the arbitration rent control was again nullified in *Bayscene Resident Negotiators v. Bayscene Mobilehome Park* (1993) 15 Cal.App.4th 119. Still today, some municipalities continue enforcing similar void bars to full appeal rights. Such cities may simply allow proposed rent applications on objection, rather than risk litigation.

In Westminster, unpaid rents kept in tenant-controlled trust accrued to $1.5 million for Los Alisos alone. Los Angeles Times, March 26, 1985, page 59 ("RENT: a Long-Fought Battle Is down to the Wire"). Los Alisos was the largest Westminster park with more than 650 mobilehome sites). *Amicus* contends that depublication of the *Westminster* decision constitutes a miscarriage of justice driven by factors of which a federal court would not be affected.

CONCLUSION

There is palpable confusion and disagreement among the circuits regarding an important federal question. Whether and how much latitude exists to abdicate congressionally-conferred jurisdiction goes to the separation of powers which only this court can answer.

The confusion and division among the circuits is not merely hypothetical. It is real and continuing to morph away from *Colorado River* with each new precedent.

The court should grant the petition.

Respectfully submitted,

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