No. 11-36

IN THE

Supreme Court of the United States

MORTIMER HOWARD TRUST, *ET AL.*,
Petitioners,

v.

PARK VILLAGE APARTMENT TENANTS ASSOCIATION, WILLIAM FOSTER, *ET AL.*,
Respondents.

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

BRIEF OF THE CALIFORNIA APARTMENT ASSOCIATION AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS FILED WITH CONSENT OF ALL PARTIES

STEPHEN D. PAHL
Counsel of Record
KAREN K. MCCAY
ANTHONY J. ADAIR
STEPHANIE M. LEIFER
PAHL & MCCAY
A PROFESSIONAL LAW CORPORATION
225 W. SANTA CLARA, SUITE 1500
SAN JOSE, CALIFORNIA 95113
SPAHL@PAHL-MCCAY.COM
(408) 286-5100
Counsel for Amicus Curiae

August 8, 2011

TABLE OF CONTENTS

TABLE OF AUTHORITIES

FEDERAL CASES

FEDERAL STATUTES

STATE CASES

STATE STATUTES

OTHER AUTHORITIES

BRIEF OF *AMICUS CURIAE* [1] CALIFORNIA APARTMENT ASSOCIATION IN SUPPORT OF PETITIONERS[2]

INTEREST OF *AMICUS CURIAE*

The California Apartment Association submits this *Amicus Brief* to urge the Court to grant the Petition for Writ of Certiorari because the United States Court of Appeals for the Ninth Circuit has decided an important question of federal law, which has not been, but should be, settled by this Court. The Ninth Circuit has held that even after federal subsidy contracts have expired, a property owner has fulfilled his contractual and regulatory obligations and the rental property is no longer subsidized by the federal government in any way, 42 U.S.C. § 1437f(t) grants "tenants a 'right to

---

[1] Pursuant to Rule 37.6, *amicus curiae* affirms that no counsel for a party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than *amicus curiae*, its members, or its counsel made a monetary contribution to its preparation or submission.

[2] *Amicus curiae* discloses that counsel of record for all parties received notice *of amicus curiae's* intention to file this brief on August 3, 2011. Counsel for all parties have consented to the filing of this *amicus* brief.

remain' in their rental units absent just cause for eviction, and that tenants with enhanced vouchers cannot be required to pay more than the tenant's portion of the rent as defined by the Section 8 statute and applicable regulations." Park Village Apartment Tenants Ass'n v. Mortimer Howard Trust, 636 F.3d 1150, 1157-58 (9th Cir. 2011) (hereinafter referred to as Park Village II).

Interpreting 42 U.S.C. § 1437f(t) to create a perpetual "right to remain" for existing tenants after the expiration of a federal subsidy contract essentially transfers property rights of a landlord to his tenants without just compensation in violation of the Fifth Amendment of the U.S. Constitution and in conflict with numerous decisions by this Court that require just compensation for a regulatory taking for the public benefit and prohibit altogether a taking for a private benefit. See, e.g., Goldblatt v. Hempstead, 369 U.S. 590, 594 (1962); Penn Central Transp. v. New York City, 438 U.S. 104 (1978). Further, the Ninth Circuit's interpretation also makes the statute an unauthorized exercise of federal power in violation of the Tenth Amendment in that it creates a property interest for tenants that previously did not exist under State law.

This Court must resolve the important questions of federal law presented by the Ninth Circuit's erroneous interpretation of 42 U.S.C. 1437f(t). Such resolution will have immediate importance "far beyond the particular facts and parties involved"[3] as it impacts thousands of property owners nationwide currently participating in the Project-Based Section 8 Housing Program.[4] If the Ninth Circuit's interpretation remains uncorrected, the burdens on existing landlords will be significant. For example, under the Ninth Circuit's interpretation, Landlords will be required to continue certifying tenant income in order to calculate each tenant's "statutorily prescribed portion of the rent." Park Village II, 636 F.3d at 1156.

The California Apartment Association ("CAA") is the largest state-wide rental housing trade association in the country, representing more than 50,000 owners and operators who are

---

[3] Address of Chief Justice Vinson before American Bar Association (Sept. 7, 1949), *reprinted in* R. Stern & E. Gressman, Supreme Court Practice 259 (5th ed. 1978)

[4] Currently there are over 5,000,000 units subsidized under various HUD programs. Current statistics can be found at http://www.huduser.org/datasets/assthsg.html.

responsible for nearly two million rental housing units throughout California. CAA has the goal of promoting fairness and equality in the rental of residential housing and aiding in the availability of high quality rental housing in California. CAA has advocated on behalf of rental housing providers in legislative, judicial and other forums in California and nationally. On behalf of its members, and impacted property owners throughout the United States, CAA strongly urges this Court to grant the Petition for Writ of Certiorari to resolve the important federal questions presented by this case which this Court has not heretofore addressed.

SUMMARY OF ARGUMENT

The federal government cannot require property owners, whose contracts with the federal government relating to certain housing subsidies have been fully consummated and are now expired, to lease private property to specified individuals at rents that are capped at 30% of the low-income household's adjusted gross income or 10% of the household's gross income, whichever is greater. The U.S. Court of Appeals for the Ninth Circuit, however, has interpreted 42 U.S.C. 1437f(t) to so require. The Ninth Circuit concluded "[p]ractically, the statute requires owners to permit tenants to

remain in the housing complex while paying only their statutorily prescribed portion of the rent." Park Village II, 636 F.3d at 1156. This erroneous interpretation is a blatant violation of a property owner's Constitutional rights.

First, such an interpretation of 42 U.S.C. 1437f(t) results in a regulatory taking in violation of the Fifth Amendment of the U.S. Constitution, which provides that private property shall not "be taken for public use, without just compensation." U.S. Const. amend. V. As interpreted by the Ninth Circuit, 42 U.S.C. 1437f(t) essentially grants a private individual an interest in the property of another without any compensation whatsoever to the rightful owner of the property. This is so even though the owner fulfilled his contractual and regulatory obligations and the underlying contracts expired.

Second, such an interpretation of 42 U.S.C. 1437f(t) is a violation of the Tenth Amendment of the U.S. Constitution. Creation of interests in real property is not an enumerated power of the federal government in Article I of the U.S. Constitution. If 1437f(t) in fact creates a "right to remain" as decided by the Ninth Circuit, creating a new estate in real property exceeds the Constitutional limitations on

the authority of the federal government and violates the Tenth Amendment since there was no clear indication from Congress that it intended to create such a right.

Third, such an interpretation violates the long-held prohibition against retroactive legislation. Applying the Ninth Circuit's interpretation of 42 U.S.C. 1437f(t) to landlords participating in the Section 8 Program prior to its enactment results in unpredictability in contract and has a negative effect on the availability of affordable housing for low-income households.

Congress could not have intended such an incongruous result when enacting 42 U.S.C. 1437f(t). Nothing in the statute requires a property owner to honor a tenant's election to remain at a previously subsidized housing project forever. 1437f(t) merely grants the U.S. Department of Housing and Urban Development ("HUD") authority to issue enhanced vouchers in an amount in excess of an applicable payment standard if the assisted family elects to remain in the same project after the termination of the Section 8 Housing Assistance Payment Contracts or other federal subsidy program.

ARGUMENT

I. Interpreting 42 U.S.C. 1437f(t) as Granting Eligible Tenants a "Right to Remain" Results in an Unconstitutional Taking Which Will Detrimentally Impact Real Property Owners Throughout the United States.

A. The "Right to Remain" is a Taking.

The Fifth Amendment limits the federal government's power of eminent domain: "nor shall private property be taken for a public use without just compensation." U.S. Const., amend. V. In its decision, the Ninth Circuit Court of Appeal concluded: "[p]ractically, the statute requires owners to permit tenants to remain in the housing complex while paying only their statutorily prescribed portion of the rent." Park Village II, 636 F.3d at 1156 (emphasis added).

By this holding, the Ninth Circuit has interpreted 1437f(t) as restricting the use of real property exiting the Section 8 Program after the expiration or termination of contracts for rental assistance. A "use restriction on real property may constitute a 'taking' if not reasonably necessary to

the effectuation of a substantial public purpose [citations omitted], or perhaps if it has an unduly harsh impact upon the owner's use of the property." Penn Central Transp. Co. v. New York City, 438 U.S. 104, 127 (1978) (holding such a conclusion is implicit in the Court's decision in Goldblatt v. Hempstead, 369 U.S. 590 (1962)). The taking resulting from the Ninth Circuit's interpretation of 1437f(t) does not effectuate a substantial public benefit and, in fact, has an unduly harsh impact upon the owner's use of the property.

Further, requiring property owners to allow certain households to remain in dwelling units regardless of the desires of the owners of those units is a *per se* taking for Fifth Amendment purposes in that the government is requiring the owner to suffer a permanent invasion of his property. These "required residents" are significantly more invasive than, for example, requiring a landlord to allow the running of cable lines through a property, which has been held to be a *per se* taking under the Fifth Amendment. Lingle v. Chevron U.S.A., Inc., 544 U.S. 528, 538 (2005) (*citing* Loretto v. Teleprompter Manhattan CATV Corp., 558 U.S. 419 (1982) in which the Court held a state law requiring landlords to permit cable companies to install cable facilities in apartment buildings effected a taking).

B. The Taking is Not For Public Use.

Essentially, the Ninth Circuit has concluded that once a property owner participates in the Section 8 Program, the tenants residing at the property at the termination or expiration of the Section 8 contract for rental assistance have acquired an interest in the real property, subject only to just cause for an eviction. The taking is not for the general benefit of the public, but instead conveys a substantial benefit on private individuals.

"It has long been accepted that the sovereign may not take the property of *A* for the sole purpose of transferring it to another private party *B,* even though *A* is paid just compensation." Kelo v. City of New London, Connecticut, 545 U.S. 469, 477 (2005). The government is prohibited from taking an owner's land "for the purpose of conferring a private benefit on a particular private party." Kelo, 545 U.S. at 477 (*citing* Hawaii Housing Authority v. Midkiff, 467 U.S. 229, 245 (1984)).

The only individuals to benefit from the alleged "right to remain" are assisted families who elect to remain in a project after an "eligibility event" as defined by statute (which generally involves the property exiting the applicable subsidy

program) so long as the individuals were residing in the project at the time of the eligibility event. The alleged purpose of the enhanced vouchers is to authorize HUD to increase the rent subsidy in order minimize the impact on residents currently living in subsidized units on a property that is leaving a subsidy program. Since the triggering event for these enhanced vouchers is the termination of a public benefit, it cannot be said that such a taking is for the public benefit, especially where the statute specifically identifies the limited private individuals who are being granted this alleged "right to remain."

C. 1437f(t) Does Not Provide Just Compensation to Property Owners.

Even if the Court were to somehow find the taking was for a public benefit, there is no compensation to property owners for the taking of the property. "The *Takings Clause* 'does not prohibit the taking of private property, but instead places a condition on the exercise of that power.'" Lingle v. Chevron U.S.A., Inc., 544 U.S. 528, 536 (2005) (*quoting* First English Evangelical Lutheran Church of Glendale v. County of Los Angeles, 482 U.S. 304, 314 (1987)). "It 'is designed not to limit the governmental interference with property rights *per se*, but rather to secure *compensation* in the event of

otherwise proper interference amounting to a taking (emphasis in original).'" Lingle, 544 U.S. at 537 (*quoting* First English Evangelical Lutheran Church of Glendale, 482 U.S. at 315). Even if 1437f(t) were a Constitutional taking in all other respects, the failure of the government to provide compensation for the taking of property renders the statute invalid.

II. 1437f(t) Violates the Tenth Amendment of the U.S. Constitution If Interpreted to Create Real Property Interests After the Expiration of Subsidy-Related Contracts.

The federal government holds a decided advantage in the delicate balance of federalism due to the Supremacy Clause. U.S. Const. Art. VI, cl. 2. As long as Congress is acting under its powers granted under the Constitution, it may impose its will on the States and legislate in areas traditionally regulated by the States. The Court assumes that Congress does not exercise its extraordinary powers lightly and, therefore, "[i]f Congress intends to alter the 'usual Constitutional balance between the States and the Federal Government,' it must make its intention to do so 'unmistakably clear in the language of the statute.'" Gregory v. Ashcroft, 501 U.S. 452, 460-61 (1991) (citing Atascadero State

Hospital v. Scanlon, 473 U.S. 234, 242 (1985)). In this case, Congress amended the enhanced voucher provision adding language with respect to the assisted family being permitted to "elect to remain" in the same project. There is no clear language from Congress that it ever intended to alter the Section 8 Program in the dramatic fashion which the Ninth Circuit has attributed to it.

The Ninth Circuit's interpretation of 42 U.S.C. 1437f(t) essentially grants "eligible tenants" a property interest in the landlord's previously subsidized property just because the project-based HUD contract expired and the property owner has elected to opt out of the Section 8 Program. If in fact the federal government has created such a new property interest (which both Petitioner and *Amicus* do not believe was its intent – See Section III *infra*), this creation violates the Tenth Amendment of the U.S. Constitution.

The Tenth Amendment provides, "[t]he powers not delegated to the United States by the Constitution, nor prohibited by it to the States, are reserved to the States respectively, or to the people." U.S. Const. amend. X. As this Court aptly stated many years ago, "[t]he question is not what power the Federal Government ought to have, but what

powers in fact have been given by the people." United States v. Butler, 297 U.S. 1, 63 (1936). The Tenth Amendment directs this Court to determine whether an incident of state sovereignty is protected by a limitation on an Article I power. New York v. United States, 505 U.S. 144, 157 (1992).

> The Constitution does not protect the sovereignty of the States for the benefit of the States or the state government as abstract political entities, or even for the benefit of the public officials governing the States. To the contrary, the Constitution divides authority between federal and state governments for the protection of individuals.

New York, 505 U.S. at 181. "The 'constitutionally mandated balance of power' between the States and the Federal Government was adopted by the Framers to ensure the protection of 'our fundamental liberties.'" Gregory v. Ashcroft, 501 U.S. 452, 458 (1991).

It is well settled law that "the disposition of immovable property, whether by deed, descent, or any other mode, is exclusively subject to the government in whose jurisdiction the property is

situated." United States v. Fox, 94 U.S. 315, 320 (1877). California law recognizes four classifications or real property: (1) estates of inheritance or perpetual estates; (2) estates for life; (3) estates for years; or (4) estates at will. Cal. Civil Code § 761. Generally a leasehold interest is an "estate for years," with the defining characteristic that the lease gives the lessee exclusive possession of the premises against all the world, including the owner, and its term is limited to endure for a definite and ascertained period; however short or long the period may be. Howard v. County of Amador, 220 Cal. App. 3d 962, 972 (1990); Parker v. Superior Court (Charles Dwight), 9 Cal. App. 3d 397, 400 (1970).

The Ninth Circuit's holding interprets 1437f(t) as creating a fifth classification of real property in California, since the grant of a permanent "right to remain" is neither an "estate for life" nor an "estate for years." According to the Ninth Circuit, an eligible tenant may elect to retain possession of the apartment apparently for their lifetime; however, the estate does not have any of the features of an estate for life such as the right to alienate or transfer the right. Further, the "right to remain" is not an estate for years, since the duration of the tenancy is neither definite nor ascertainable, as the duration of the tenancy, absent just cause,

apparently is entirely at the whim of the tenant. Under the Tenth Amendment, Congress does not have the power to create such a new estate in real property in California.

Further, California law contains a comprehensive statutory scheme setting forth the rights, duties and obligations of lessors and lessees of residential real property. Cal. Civ. Code §§ 1940 - 1954.1 (hiring of real property); Cal. Civ. Pro. Code §§ 1159 – 1179a (summary proceedings for obtaining possession to real property in certain cases). The Ninth Circuit's erroneous interpretation of 42 U.S.C. 1437f(t) in Park Village II contravenes 139 years of established California landlord-tenant law even though the contractual obligations which allowed the federal government to have some oversight of the landlord-tenant relationship have been fulfilled and the contracts expired. If this Court does not correct the Ninth Circuit's erroneous interpretation of federal law, the decision effectively concludes the U.S. Congress has re-written California real property law and landlord-tenant law, without any authority to do so under Article I of the U.S. Constitution.

III. 1437f(t) Does Not Obfuscate the Voluntary Nature of the Section 8 Program; It Merely Authorizes HUD to Increase Assistance Payments for Eligible Households.

As argued effectively by Petitioners in their Petition for Writ of Certiorari, it is apparent Congress never intended to violate the Fifth and Tenth Amendments in enacting 42 U.S.C. 1437f(t). It is only the Ninth Circuit's erroneous interpretation of this federal law that runs afoul of the U.S. Constitution. Section 1437f(t) merely grants authority to HUD to issue vouchers in excess of the applicable payment standard when an assisted family has elected to remain in the same project after the Section 8 Contract terminates and "the rent for the dwelling unit of the family in such project exceeds the applicable payment standard established pursuant to subsection (o) for the unit." 42 U.S.C. 1437f(t)(1)(B).

In its decision, the Ninth Circuit focused on the qualifying language of the statute which merely indicates when the "enhanced" payment standard is triggered. In reaching its erroneous conclusion that Congress created a "right to remain," the Ninth Circuit relied solely on the phrase "the assisted

family may elect to remain in the same project in which the family was residing on the date of the eligibility event for the project." Park Village II, 636 F.3d at 1156-57 (*quoting* 42 U.S.C. 1437f(t)(1)(B)). Rather than granting the eligible tenants a "right to remain," this language merely states when HUD may issue a voucher over and above the otherwise authorized applicable payment standard. As recognized in the legislative history of the statute:

> This bill includes legal authority to allow HUD to provide section 8 rental assistance up to the market rent of a unit for low-income families where owners of projects assisted with section 8 project-based assistance choose to not renew their expiring section 8 contracts.

S. REP. NO. 106-161, at 32 (1999). Even if the Ninth Circuit was correct in its assessment that the "plain language of the statute" supports its reading of Section 1437f(t), as summarized in Salute v. Stratford Greens Garden Apts., "[c]ourts may adopt a restricted rather than the literal or usual meaning of a statute 'where acceptance of that [literal] meaning would lead to absurd results or would thwart the obvious purpose of the statute.'" 136

F.3d 293, 297 (2d Cir. N.Y. 1998) (*quoting)* Helvering v. Hammel, 311 U.S. 504 (1941)). "The plain meaning of a statute may not be controlling in those rare cases where 'literal application of a statute will produce a result demonstrably at odds with the intentions of its drafters.'" Salute, 136 F.3d at 297 (*quoting* Tomka v. Seiler Corp., 66 F.3d 1295, 1313 (2d Cir. 1995)). "This exception to the normal rule 'is particularly pertinent when construing a recent amendment to a complex statute that produces an unexpected result and when there is strong reason to doubt that Congress intended that result.'" Salute, 136 F.32 at 297 (*quoting* Lewis v. Grinker, 965 F.2d 1206, 1215 (2d Cir. 1992)).

There is nothing in Section 1437f(t) which obligates a property owner to honor an election of a tenant. Such an interpretation of this federal law directly contravenes the intent of Congress to make participation in the Section 8 Program voluntary. The Section 8 Program was created "for the purpose of aiding low-income families in obtaining a decent place to live and of promoting economically mixed housing . . . ." 42 U.S.C. 1437f(a). The Program was designed to encourage voluntary private sector participation in the federal government's efforts to expand the available housing stock for low-income residents. As an inducement to participate,

statutory provisions were enacted to protect the property owner's ability to opt out of the Section 8 Program; leaving the door open for any owner to exit the Section 8 Program for business or economic reasons, which reasons may vary from owner to owner.

Interpreting 42 U.S.C. 1437f(t) to create a "right to remain" for all existing residents significantly frustrates the goal of the Section 8 Program to encourage private sector participation in the Nation's housing programs by placing property owners on the horns of a dilemma so long as the Section 8 tenant chooses to reside at the landlord's premises. Under the Ninth Circuit's decision, property owners may either (a) perpetually participate in the Section 8 Program and be forever more subject to regulation by HUD, regardless of the burdens associated with such regulation; or (b) forego any reasonable rent since rent for these private individuals would be capped at "the tenant's portion of the rent as defined by the Section 8 statute and applicable regulations." Park Village II, 636 F.3d 1157-58.

Further, as thoroughly argued by Petitioners in their Petition for Writ of Certiorari, the erroneous interpretation of federal law by the Ninth Circuit

renders the notice provisions of 42 U.S.C. 1437f(c)(8) meaningless. The law requires property owners to provide tenants a minimum of one year's notice of the intent to opt out of the Section 8 Program before the owner may "evict the tenants or increase the tenants' rent payment." 42 U.S.C. 1437f(c)(8)(B). The holding of Park Village II, however, renders this whole provision moot, as regardless of whether tenants are given one year's notice or ten years' notice, the property owner has no option to either evict the tenant or raise the tenant's rent without agreeing to enter into further contracts with HUD. Certainly, it was not the intent of Congress to abrogate entire clauses of 42 U.S.C. 1437f with just a few words contained in 42 U.S.C. 1437f(t)(1)(B).

IV. 1437f(t) Violates the Enduring Presumption Against Retroactive Legislation if Applied to Properties Participating in the Section 8 Program Prior to its Enactment.

A. Legislation Cannot be Enforced Retroactively Unless Congress Clearly Provides Otherwise.

"[T]he presumption against retroactive legislation is deeply rooted in our jurisprudence, and

embodies a legal doctrine centuries older than our Republic." Landgraf v. Usi Film Prods., 511 U.S. 244, 265 (1994). The Constitution, over and over, maintains its proscription against laws that penalize without warning. The Ex Post Facto clause of Article I, Section 9, Clause 3 prohibits the retroactive application of criminal statutes. Article I, Sections 9 and 10 preclude the states and the federal government from issuing bills of attainder and circumventing the judiciary to punish the accused through legislation. The Due Process Clause makes clear that rights, including property rights, may not be infringed upon without proper notice and a hearing. The Takings Clause sets concrete limits on the ability of the government to deprive citizens of their expectations in property rights. The unfairness that inevitably results from retroactive legislation ultimately will "deprive citizens of legitimate expectations and upset settled transactions." General Motors Corp. v. Romein, 503 U.S. 181, 191 (1992). Such is the effect of the Ninth Circuit's interpretation of 1437f(t).

Laws may, at times, have a retroactive effect, but only where expressly allowed through clear statutory language, even where there might be an otherwise logical or compelling justification for doing so. Bowen v. Georgetown Univ. Hosp., 488 U.S. 204,

208-209 (1988). This requirement ensures that Congress, before the passage of the legislation, has "considered the potential unfairness of retroactive application and determined that it is an acceptable price to pay for the countervailing benefits." Landgraf v. Usi Film Prods., 511 U.S. at 272-73. The silence of Congress regarding the retroactive effect of 42 U.S.C. 1437f(t) prohibits its application as to owners who were in the Section 8 Program prior to enactment of 1437f(t).

B. Retroactive Application of 1437f(t) as Interpreted by the Ninth Circuit Results in Unpredictability of Contract Which Has Long Been Disfavored by this Court.

The Ninth Circuit's interpretation of 42 U.S.C. 1437f(t) epitomizes the negative effects of retroactive legislation. The "right to remain," if in fact a part of the statute enacted by Congress, became law in 2000. The Ninth Circuit's decision essentially writes this "right to remain" into contracts negotiated long before 2000 (in the case of Petitioners, the original agreement was entered into in 1978). To do so is to unexpectedly punish those who voluntarily participated in the Section 8 Program by mandating rent restrictions and

limiting tenant selection long after the property owners originally anticipated when entering into the Section 8 Program.

This Court has found that where a statute attaches new legal consequences to events completed before its enactment, it is operating retroactively. Landgraf, 511 U.S. at 270. Like thousands of other property owners, Petitioners entered into a contract with HUD more than thirty years ago governing their participation in and exit from the Section 8 Program. "The largest category of cases in which we have applied the presumption against statutory retroactivity has involved new provisions affecting contractual or property rights, matters in which predictability and stability are of prime importance." Landgraf, 511 U.S. at 271. The effect of Park Village II is to deprive property owners who elected to take part in Section 8 Programs decades ago the ability to know in advance to what they were agreeing.

Congress must not be found to have legislatively changed the Section 8 Program to perpetually subject property owners to components of the Section 8 Program long after applicable contracts have expired. Such precedent will undoubtedly discourage others from entering into

similar contracts with the government, significantly impacting private investment in affordable housing for low-income individuals potentially impacting millions of low-income Americans in desperate need of affordable housing.

CONCLUSION

In its decision, the Ninth Circuit stated "Defendants have not offered any persuasive reason why we should flout the clear language of the statute, or depart from the Secretary's or numerous [*sic*] federal courts' constructions of the statute." Park Village II, 636 F.3d at 1157. As set forth above and argued by Petitioners in their Petition for Writ of Certiorari, the most obvious reason is that the Ninth Circuit has erroneously interpreted this federal statute and, in so doing, has blatantly trampled the Constitutional rights of property owners throughout the United States.

Since the passage of 1437f(t) in 2000, this Court has not had the opportunity to address the important federal question – has the federal government granted a new property right in private individuals simply because those individuals were living in previously subsidized housing when the property owner fulfilled his contractual obligations

and the rental property was no longer subject to regulation by HUD under the Section 8 Program. This Court must grant the Petition for Writ of Certiorari to resolve this important question of federal law and preserve the Constitutionally protected rights of property owners who voluntarily participated in this Country's efforts to provide affordable housing to low-income households prior to the enactment of 42 U.S.C. 1437f(t).

August 8, 2011

Respectfully Submitted,

/S/

STEPHEN D. PAHL
Counsel of Record
KAREN K. MCCAY
ANTHONY J. ADAIR
STEPHANIE M. LEIFER
PAHL & MCCAY
A PROFESSIONAL LAW CORPORATION
225 W. SANTA CLARA, SUITE 1500
SAN JOSE, CALIFORNIA 95113
SPAHL@PAHL-MCCAY.COM
(408) 286-5100 (TELEPHONE)
(408) 286-5722 (FACSIMILE)

Counsel for Amicus Curiae
The California Apartment
Association