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### By David Pettit and Michael Schafler

# In a Class of Their Own

Speaking out at a land use forum may be all that a plaintiff needs to do to establish a "class of one" civil rights cause of action

and use disputes arise in a wide variety of circumstances. Someone's property is downzoned to a less intensive use. A development is restricted because the property has environmentally sensitive habitat within its acreage. A farmer is denied a grading permit. A developer is unhappy with a consultant's report that is part of an environmental impact report. A property owner is denied a development permit, a subdivision map, a conditional use permit, a lot line adjustment, or a certificate of compliance. Historically, the federal system has shied away from resolving these quintessentially local matters. But that may be changing.

Adverse local land use actions or decisions often have led owners or developers to file constitutional claims, principally in state court, alleging that the actions or decisions are regulatory takings.<sup>1</sup> A plaintiff in these cases, after first exhausting various administrative options, must show that the property at issue was essentially rendered valueless by the governmental action or decision. However, as a result of the U.S. Supreme Court's decision in Village of Willowbrook v. Olech, these claims are now commonly being repack-

aged as "class of one" civil rights claims. Without regard to whether an identifiable class of plaintiffs exists or whether the alleged improper treatment by a municipality is related to any previously cognizable protected class, an aggrieved landowner may now bring a federal cause of action. This jurisprudential sea change permits plaintiffs to plead violations of the due process clause, the equal protection clause, the First Amendment, the contracts clause, the supremacy clause, or other federal laws solely on the basis of allegations that local land use authorities acted in an "irrational or wholly arbitrary" manner.3

In *Olech*, the U.S. Supreme Court recognized that equal protection claims can be successful even if they are brought by a "class of one,' if the individual plaintiff alleges intentional and disparate treatment

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Since Olech, property owners are bringing equal protection and other civil rights claims based on the assertion that they have been treated differently, for reasons that are arbitrary or invidious, from other property owners that are similarly situated.

compared to others similarly situated and that there is no rational basis for the difference in treatment."4 In a separate concurring opinion, Justice Brever expressed his concern that the majority opinion would "transform many ordinary violations of city or state law into violations of the Constitution," and attempted to narrow the majority opinion.<sup>5</sup> Breyer explained that the presence in the *Olech* complaint of allegations of "vindictive action,' 'illegitimate animus,' or 'ill will," was an "extra factor" necessary to convert "runof-the-mill zoning cases into cases of constitutional right."6 Notably, however, the per curiam opinion of the other eight justices expressly declined to incorporate the "theory of subjective ill will."7

Of course, plaintiffs' counsel would prefer to ignore Breyer's concurrence. By following the dictates of the per curiam opinion, "class of one" plaintiffs could survive a motion to dismiss or even a summary judgment motion simply by alleging that they were treated differently than others and that there is no rational explanation for the difference—without any showing of governmental animus or ill will. Currently, however, most courts that have considered the issue have largely ignored the Supreme Court's statement that it was not reaching the subjective ill will theory and have instead followed Breyer's concurrence.8 They have held that *Olech* did not remove the requirement that a plaintiff alleging an equal protection violation based on selective enforcement must show that the governmental action at issue was motivated by animus.9 Notably, the Supreme Court's post-Olech decision in City of Cuyahoga Falls v. Buckeye Community Hope Foundations<sup>10</sup> resolved an equal protection claim involving a single plaintiff without mentioning *Olech*.

Taking all this into consideration, because showing animus is often a fact-intensive and inferential exercise that is costly and time-consuming to rebut, in many cases the mere allegation of animus may pave the way toward a

jury trial.11 Consequently, plaintiffs' counsel should plead both unequal treatment and animus if the facts permit.

Under traditional jurisprudence interpreting 42 USC Section 1983 (the civil rights jurisdictional statute), local governments can be found liable for violations of the U.S. Constitution when those constitutional violations represent an abuse of power that "shocks the conscience." It is not sufficient for the violation to simply be a violation. 12 As the Eighth Circuit has held: "A bad faith violation of state law remains only a violation of state law."13

Olech has changed this landscape, however. Since *Olech*, property owners are bringing equal protection and other civil rights claims based on the assertion that they have been treated differently, for reasons that are arbitrary or invidious, from other property owners that are similarly situated. One significant benefit is that these plaintiffs do not need to be a member of a protected class or any class at all. Another advantage is that they do not need to show that the challenged action shocks the conscience for their claims to be successful.

Therefore, if *Olech* is taken to its logical extreme, almost every property rights case could be construed as a civil rights case because a property owner usually can allege that he or she was treated differently, for no good reason, from similarly situated persons in the same jurisdiction. The owner also can claim retaliation for speaking out in public against the decisions of a planning or zoning department. Indeed, property owners can effectively lay the foundation for a civil rights suit by appearing in public and denouncing the local government prior to receiving a determination on a land use application. If afterward they receive an unfavorable outcome, they likely will be able to claim that the result was based upon retaliatory disparate treatment.14 Plaintiffs filing these suits often will survive a demurrer or motion to dismiss,

and their opponents will require expensive discovery to prepare a motion for summary judgment that will ultimately be problematic. Indeed, it would not be a surprise if the plaintiff's claims surmount all procedural hurdles on their way to a jury trial.15

### **Manufacturing Ripeness**

For constitutional claims, the ordinary principles of Article III ripeness apply just as they do in other federal actions. The Ninth Circuit has held:

[J] ust as the case or controversy requirement of Article III prevents a court from hearing an abstract question, the ripeness requirement prevents "the courts...from entangling themselves in abstract disagreements over administrative policies, and also...protect[s] the agencies from iudicial interference until an administrative decision has been formalized and its effects felt in a concrete way by challenging parties."16

The element of ripeness, together with the requirement in Williamson County Regulatory Planning Commission v. Hamilton Bank that a property owner first resort to available state procedures to obtain both 1) a final determination on a development application and 2) compensation,17 would appear to preclude "class of one" claims in the land use context unless and until local permit procedures have been completed. Until that occurs, no one knows the nature or extent of any injury. Clearly, a determination of whether, for example, a developer will or will not receive a development permit is the foundation for any future claim by the developer.

Recognizing this, the Ninth Circuit has repeatedly stated that equal protection claims arising in land use cases that include regulatory taking claims are unripe unless and until there is "a final determination by the relevant government body."18 Indeed, in Williamson the U.S. Supreme Court held

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that the plaintiff's regulatory taking claim was premature under both the just compensation clause of the Fifth Amendment and the due process clause of the Fourteenth Amendment.19

Should this well-established rule of ripeness be defeated if, on the same set of facts, the plaintiffs decide to drop their Fifth Amendment taking claim but retain their equal protection claim? For example, in *Kinzli* v. City of Santa Cruz,20 the plaintiffs alleged that a local "greenbelt" ordinance was unconstitutional as it applied to them, even though the plaintiffs had not yet applied for a development permit. The Ninth Circuit held that the plaintiffs' taking claim as well as their equal protection claim were not ripe for adjudication by the district court "until planning authorities and state review entities make a final determination on the status of the property."21 Would the court have reached a different result if the plaintiffs had not included a taking claim in their lawsuit? Under that circumstance, no conceptual reason exists for the court to rule contrary to its decision involving both claims.

However, in Carpinteria Valley Farms, Ltd. v. County of Santa Barbara, 22 the Ninth Circuit did just that. In that case, the plaintiffs successfully decoupled their equal protection claims from their potential taking claim and convinced the court that their claims were ripe even though the plaintiffs did not allow the administrative process for the desired land use permits to run its course. The plaintiffs in Carpinteria Valley Farms had applied for 13 development permits from the county. At the time of their lawsuit, they had received 11, withdrawn one, and one was pending. Nonetheless, they sued the county and certain county employees, claiming that they had been treated differently than other applicants because a representative of one of the plaintiffs had criticized county practices at public meetings. The Ninth Circuit held that the claims based on the first 11 permits were time-barred, but the claims based on one application (that was later withdrawn) and one pending permit application were ripe for federal adjudication—regardless of whether the permits were ever issued and what conditions (if any) were attached.

This result is hard to reconcile with Kinzli and appears to announce a significant departure from longstanding Ninth Circuit jurisprudence in land use cases. If traditional ripeness principles are not applied to "class of one" or other civil rights cases arising from the application of local land use regulations, more federal judges and juries will very likely be asked to decide the propriety of everyday decisions regarding planning, zoning, grading, and agricultural issues-and to award damages

against local governments and their officials as a result.

To take maximum advantage of the Carpinteria Valley Farms opinion and to sufficiently establish the "certain limited and appropriate circumstances" in which a land use claim under Section 1983 may proceed notwithstanding the fact that the underlying Fifth Amendment taking claim is not vet ripe,<sup>23</sup> a developer's attorney should allege a concrete act showing a denial of equal protection within the statute of limitations period.<sup>24</sup> The act could be a procedural irregularity, such as excessive delay. If the decision in Carpinteria Valley Farms is correct, a developer's allegation can be merely that it was treated differently in the development process than similarly situated developers without good reason-and without regard to whether the desired permit ultimately was obtained. The case is strengthened if the developer can allege and prove that there is a nexus between the concrete act and a basis for finding animus: for example, the concrete act is in retaliation for the developer's public communications criticizing local government officials.

Defense counsel should carefully scrutinize the complaint and should, from the very outset, structure discovery to determine whether statute of limitations issues exist. A developer's complaint will often contain a long, convoluted story of alleged mistreatment. Much or all of that story will involve actions that took place outside of the statute of limitations period. Some plaintiffs may argue, by analogy to employment cases, that a violation not only occurred but also is continuing, and thus a claim may be brought based on acts that took place outside the usual one- or two-year statute of limitations. However, recent U.S. Supreme Court and Ninth Circuit decisions have placed limits on the continuing violation theory in employment actions, and it is logical that the same rules would apply to land use civil rights cases.25

Defense counsel should also consider whether abstention is warranted<sup>26</sup> and whether the doctrine of qualified immunity provides a means to defeat a plaintiff's lawsuit for some individual defendants.<sup>27</sup> Also, when a developer ultimately accepts a permit but nevertheless sues on equal protection grounds despite this acceptance, defense counsel should consider whether the doctrines of waiver or judicial estoppel would apply.28

Individual defendants may be implicated in "suing the messenger" cases based on reports they prepared on behalf of a governmental agency making a land use decision. A potential defense in these cases, as well as

some other land use cases, stems from California's anti-SLAPP statute,29 which protects local government and its contractors.30 This statute also applies in federal diversity cases,31 although the California anti-SLAPP statute's special discovery rules do not.32 However, the anti-SLAPP statute does not apply in cases involving federal questions.<sup>33</sup> Still, it might apply to state law claims that are appended to federal constitutional claims.

### A Break from the Past

The decisions in Olech and Carpinteria Valley Farms are hard to reconcile with the historical approach of the federal courts to local land use issues. The U.S. Supreme Court has repeatedly expressed its view that "[t]he power of local governments to zone and control land use is undoubtedly broad and its proper exercise is an essential aspect of achieving a satisfactory quality of life in both urban and rural communities."34 In other words, "the Government has considerable latitude in regulating property rights in ways that may adversely affect the owners."35 Therefore, the general rule has been that state and local governments have wide discretion in regulating private citizens' use of their properties when the government is exercising its police powers and acting to promote the public welfare.

Prior to the recent changes largely created first by Olech and now Carpinteria Valley Farms, it was well settled that a land use restriction or decision should stand so long as it 1) served a legitimate interest in promoting the public health, safety, morals, and general welfare of affected citizens, 36 and 2) was not irrational, arbitrary, or capricious.<sup>37</sup> In considering the public's welfare, the local government was entitled to allow, restrict, or deny a land use request based on a range of factors related to the proposal, such as increased traffic and noise, the effect on property values, the increased demand for city or county services, the preservation of agricultural uses of land, the undesirable side effects of the proposed use, public safety, and even such intangible factors as community pride and aesthetics.<sup>38</sup> While property owners have extensive rights regarding the use and enjoyment of the property they own, restrictions on private property are "properly treated as part of the burden of common citizenship."39 The U.S. Supreme Court explained that the "burden of common citizenship" is that "all property in this country is held under the implied obligation that the owner's use of it shall not be injurious to the community."40

Until recently, the Supreme Court had not wavered from the principle that the U.S. Constitution does not permit a court to "over-

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**1.** A taking allegation under the Fifth Amendment cannot be based on an adverse land use action or decision by a local planning commission or zoning board.

True

False.

**2.** The *Village of Willowbrook* v. *Olech* decision created a "class of one" equal protection claim.

True

False.

**3.** Justice Breyer's concurrence in *Olech* attempts to narrow the majority opinion by stressing the importance of an "extra factor," such as "'vindictive action,' 'illegitimate animus,' or 'ill will'" by the government.

True.

False.

**4.** "Class of one" plaintiffs will most likely be successful if they plead disparate treatment without governmental animus.

True.

False.

**5.** Most post-*Olech* courts have ignored the theory of Breyer's concurrence.

True.

False

**6.** A bad faith violation of state law is a constitutional tort.

True.

False.

**7.** An equal protection claim based on a preliminary denial of a land use permit can be ripe for adjudication under Article III even though the permit process has not been completed.

True.

False.

**8.** The Supreme Court in *Williamson County Regulatory Planning Commission v. Hamilton Bank* held that a taking or due process case arising from the denial of a land use permit may not be brought in federal court until the denial

has been fully litigated in state court.

True.

False.

**9.** The Ninth Circuit in Carpinteria Valley Farms, Ltd. v. County of Santa Barbara decided that the Williamson ripeness principles do not apply to an equal protection claim that includes a claim of animus.

True.

False.

**10.** The federal statute of limitations for equal protection claims tracks the appropriate state personal injury statute.

True.

False.

**11.** The "continuing violation" theory permits a plaintiff to seek recovery for acts that are otherwise barred by the statute of limitations.

True

False.

**12.** The doctrine of abstention may apply in land use disputes.

True

False.

**13.** The doctrine of qualified immunity may provide a defense to claims alleging a constitutional violation.

True.

False.

**14.** The California anti-SLAPP statute may provide a defense in federal diversity cases but not in federal question cases.

True.

False

**15.** The U.S. Supreme Court has ruled that I state and local governments have very narrowly circumscribed powers to regulate a private citizen's use of his or her own property.

True

False.

**16.** Local regulation of private property on the basis of aesthetics has been upheld by the courts

True.

False.

**17.** Traditionally, equal protection and due process challenges to local land use decisions have been evaluated under the "rational relationship" test.

True.

False.

**18.** It is a well-established principle of law that **I** each parcel of real property is unique.

True.

False.

**19.** A land use decision that affects an owner's First Amendment rights may be subject to a higher level of scrutiny.

True.

False.

**20.** Accessory uses of land, such as charity events, can never be regulated by local government.

True.

False.

### MCLE Answer Sheet #122

### IN A CLASS OF THEIR OWN Sponsored by CourtCall LLC



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4.	☐ True	☐ False
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11.	☐ True	☐ False
12.	☐ True	☐ False
13.	☐ True	☐ False
14.	☐ True	☐ False
15.	☐ True	☐ False
16.	☐ True	☐ False
17.	☐ True	☐ False
18.	☐ True	☐ False
19.	☐ True	☐ False
20.	☐ True	☐ False

turn [a statute that does not burden a suspect class or a fundamental interest] unless the varying treatment of different groups or persons is so unrelated to the achievement of any combination of legitimate purposes that we can only conclude that the legislature's actions were irrational."41

Under that framework, federal constitutional challenges to a land use rule, such as equal protection and due process claims, were an uphill climb because the state action was only subject to the "rational relationship" test. 42 Under this test, the plaintiff could only challenge the land use or zoning decision on the basis of whether it is "rationally related to the promotion of the public health, safety or welfare."43

However, after *Olech*, landowners' counsel may convince courts not to take such a deferential view of local land use decisions when there is evidence of disparate treatment and/or animus. When these elements are present, a local land use decision may be subject to a higher level of constitutional scrutiny than the rational relationship test.

### **Restrictions on Accessory** Uses

In this new era, property owners or developers are filing "class of one" challenges to the local regulation of accessory uses of property, requiring lengthy and tedious comparisons between a plaintiff's use of land and the uses by others on other, allegedly similarly situated property. This practice contradicts longstanding state and federal jurisprudence holding that each parcel of land is unique<sup>44</sup> a simple and obvious principle that has long justified different treatment even for neighboring properties. The principle now can be transformed into a powerful weapon for unhappy, litigious landowners to attack local regulatory agencies and their staffs. Differential treatment is not an unlikely occurrence. Depending on how Olech and Carpinteria Valley Farms are interpreted, local agencies may need to mount defenses to challenges involving the different treatment of properties at least to the summary judgment stage in order to substantiate a valid reason for their actions.

The fact that agencies will have to defend accessory use decisions in this manner represents a change from traditional practices. As one court observed, "In general, land use regulation...specifying some uses and permitting ad hoc determinations of valid accessory uses, is authorized as a common, widespread zoning technique."45 However, the court noted that "the validity of such regulation depends on the reasonableness of the definition of accessory use."46 For example, in considering the storage of inoperable or

"junk" vehicles on a property zoned for single-family dwellings, courts considered customs and referred to "our common sense, judicial and personal knowledge of what (single-family) dwellings are customarily and ordinarily used for-what the ordinary man of the street would consider a one-family dwelling to be."47

Some accessory uses of property—for example, the posting of signs or hosting parties or charitable events—may implicate First Amendment rights of free speech or free association. When that occurs, the government action may be subject to a higher level of scrutiny, regardless of whether an equal protection claim is pleaded. Further, a person's First Amendment rights are greater when they are exercised on the person's private property rather than on public property.48

For example, in *Meredith* v. *Oregon*<sup>49</sup> the owner of a vacant parcel of property adjacent to Highway 101 erected a sign on his property that was visible to travelers on the highway. The sign advertised a nearby resort. The property owner did not obtain a permit under the state law requiring a permit before posting an outdoor commercial sign visible to the traveling public. The city ordered the property owner to remove the sign or face a fine. The property owner challenged the city ruling. The Ninth Circuit did not reach the merits of the case but implied that the private property owner had at least a potentially viable First Amendment claim against the city.<sup>50</sup> While the city ordinance restricts speech, and commercial speech is a category of speech that may be regulated, the law must still survive heightened scrutiny because it implicates a fundamental right.

Other "class of one" attacks can arise if, for example, property owners are being prohibited from raising chickens on their property or from playing recreational polo or softball on their property, and others have not been so restricted. Regardless of whether a use is protected under the First Amendment, these cases become more difficult to defend when the plaintiff alleges retaliatory treatment in response to the plaintiff's public, anti-government speech. Moreover, according to Carpinteria Valley Farms, a disputed land use restriction may be ripe for federal adjudication whether or not, after the administrative process ends, the restriction still stands.

Before Olech and Carpinteria Valley Farms, the history of federal jurisprudence did not contain a hint that inherently local land use disputes are appropriate for federal judicial resolution. However, if the recent result in Carpinteria Valley Farms is not overruled, and if *Olech* continues to be broadly applied, the federal courts may, contrary to their history of asserting otherwise, indeed become the "Grand Mufti of local zoning boards."51■

- <sup>1</sup> See, e.g., Williamson County Regulatory Planning Comm'n v. Hamilton Bank, 473 U.S. 172 (1985).
- <sup>2</sup> Village of Willowbrook v. Olech, 528 U.S. 562 (2000).
- 3 Id. at 565
- 4 Id. at 564 (per curiam).
- <sup>5</sup> Id. at 565 (Breyer, J., concurring).
- 6 Id. at 565-66
- 7 Id. at 565
- 8 Michael S. Giaimo, Ill Will and Class of One: Equal Protection Claims after the Olech Decision, LAND USE & ZONING DIGEST, Feb. 1, 2003, at 4-7 [hereinafter Giaimo]. 9 Purze v. Village of Winthrop HarborCruz v. Town of Cicero, 275 F. 3d 579, 587 (7th Cir. 2001); Harlen Assocs. v. Incorporated Village of Mineola, 273 F. 3d 494, 499-500 (2d Cir. 2001); Hilton v. City of Wheeling, 209 F. 3d 1005, 1008 (7th Cir. 2000), cert. denied, 531 U.S. 1080 (2001): Bryan v. City of Madison, 213 F. 3d 267, 277 (5th Cir. 2000). See also Giaimo, supra note 8. But see Nevel v. Village of Schaumberg, 297 F. 3d 673, 681 (7th Cir. 2002); Bower v. Village of Mt. Sterling, 2002 WL 1752270, at \*7 (6th Cir. 2002) (unpublished disposition).
- 10 City of Cuyahoga Falls v. Buckeye Cmty. Hope Founds., 538 U.S. 188, 123 S. Ct. 1389 (2003). The plaintiff in Cuyahoga Falls sued a city, claiming that a city-sponsored referendum concerning a low-income housing complex was racially discriminatory. Without citing or discussing Olech, the Supreme Court held that "proof of racially discriminatory intent or purpose is required" to show a violation of the equal protection clause. Id. at , 123 S. Ct. at 1394.
- 11 See, e.g., Jamieson v. Poughkeepsie City Sch. Dist., 195 F. Supp. 2d 457, 471 (S.D. N.Y 2002) (refusing to grant qualified immunity because of fact-intensive nature of animus claims and defenses)
- 12 County of Sacramento v. Lewisi, 523 U.S. 833, 845-46 (1998)
- <sup>13</sup> Chesterfield Dev. Corp. v. City of Chesterfield, 963 F. 2d 1102, 1104-05 (8th Cir. 1992).
- <sup>14</sup> See City of Cuyahoga Falls v. Buckeye Cmty. Hope Founds., 538 U.S. 188 (2003). See also Sanghvi v. City of Claremont, 328 F. 3d 532 (9th Cir. 2003) (discrimination against Alzheimer's patients).
- 15 Summary judgment may be even more difficult to obtain in so-called mixed motive cases, in which the defendant claims that it would have taken the challenged action even in the absence of any retaliatory motive against the plaintiff. See, e.g., Ostad v. Oregon Health Sciences Univ., 327 F. 3d 876 (9th Cir. 2003). 16 Stuhlbarg Int'l Sales Co., Inc. v. John D. Brush & Co., Inc., 240 F. 3d 832, 839 (9th Cir. 2001) (quoting Lee Pharms. v. Kreps, 577 F. 2d 610, 618 (9th Cir. 1978)). See also Abbot Labs. v. Gardner, 387 U.S. 136 (1967). 17 Williamson County Regulatory Planning Comm'n v.
- Hamilton Bank, 473 U.S. 172, 186, 194 (1985). <sup>18</sup> Southern Pac. Transp. Co. v. City of Los Angeles, 922
- F. 2d 498, 507 (9th Cir. 1990). 19 Williamson, 473 U.S. at 200.
- 20 Kinzli v. City of Santa Cruz, 818 F. 2d 1449 (9th Cir. 1987), as amended, 830 F. 2d 968 (9th Cir. 1987).
- 21 Id. at 1455.
- 22 Carpinteria Valley Farms, Ltd. v. County of Santa Barbara, No. 01-57218, 2003 WL 22176120 (9th Cir. Sept. 23, 2003).
- 23 Id. at \*8.
- <sup>24</sup> The statute of limitations for actions under 42 U.S.C. §1983 is determined by reference to state law governing personal injury actions. Wilson v. Garcia, 471 U.S. 261, 275-76 (1985). California historically had a one-year statute of limitations. Elliot v. City of Union City, 25 F. 3d 800, 802 (9th Cir. 1994); see former CODE CIV. PROC. §340(3). Starting in 2003, the general personal injury

statute of limitations is for two years. See CODE CIV. PROC. §335.1. Presumably, that time period will apply to §1983 cases arising from actions occurring in 2003 or later.

 $^{25}$  See National R.R. Passenger Corp. v. Morgan, 536 U.S. 101, 109-15 (2002); Lyons v. England, 307 F. 3d 1092, 1105-08 (9th Cir. 2002). However, under Lyons, evidence of time-barred claims may be introduced to show a pattern or practice.

<sup>26</sup> Abstention doctrine can be particularly useful in land use litigation because the U.S. Supreme Court has recognized that "regulation of land use is perhaps the quintessential state activity." FERC v. Mississippi, 456 U.S. 742, 768 n.30 (1982).

<sup>27</sup> A government official is entitled to qualified immunity unless 1) the specific right that has been allegedly violated was so clearly established as to alert a reasonable officer to its constitutional parameters; and 2) a reasonable officer would have known that his or her conduct was unlawful. Pierce v. Multnomah County, 76 F. 3d 1032, 1037-38 (9th Cir. 1996); Kelley v. Borg, 60 F. 3d 664, 666 (9th Cir. 1995).

<sup>28</sup> See, e.g., People v. Torch Energy Servs., Inc., 102 Cal. App. 4th 181 (2002); Hamilton v. State Farm Fire & Cas. Co., 270 F. 3d 778 (9th Cir. 2001).

<sup>29</sup> Code Civ. Proc. §425.16.

30 Mission Oaks Ranch v. County of Santa Barbara, 65 Cal. App. 4th 713 (1998), overruled on other grounds, Briggs v. Eden Council for Hope & Opportunity, 19 Cal. 4th 1106, 1123 n. 10 (1999).

<sup>31</sup> United States ex rel. Newsham v. Lockheed Missiles & Space Co., Inc., 190 F. 3d 963, 968 (9th Cir. 1999).

32 Metabolife Int'l, Inc. v. Wornick, 264 F. 3d 832 (9th

33 Globetrotter Software Inc. v. Elan Computer Group, Inc., 63 F. Supp. 2d 1127 (N.D. Cal. 1999).

34 Schad v. Borough of Mount Ephraim, 452 U.S. 61, 68

35 Hodel v. Irving, 481 U.S. 704, 713 (1987).

36 See Congregation Kol Ami v. Abington Township, 309 F. 3d 120, 133 (3d Cir. 2002).

<sup>37</sup> See, e.g., Arlington Heights v. Metropolitan Hous. Dev. Corp., 429 U.S. 252, 263 (1977).

38 See, e.g., Members of the City Council v. Taxpayers for Vincent, 466 U.S. 789, 805 (1984) (promoting aesthetic values); Village of Belle Terre v. Boraas, 416 U.S. 1, 9 (1974) (promoting family values); Christensen v. Yolo County Bd. of Supervisors, 995 F. 2d 161, 165 (9th Cir. 1993) (promoting agricultural uses of land and alleviating economic hardship).

39 Kimball Laundry Co. v. United States, 338 U.S. 1, 5

40 Mugler v. Kansas, 123 U.S. 623, 665 (1887).

41 Pennell v. San Jose, 485 U.S. 1, 14 (1987).

42 Christensen, 995 F. 2d at 165.

43 Nelson v. City of Selma, 881 F. 2d 836, 838-39 (9th Cir. 1989). See Christensen, 995 F. 2d 161; Southern Pac. Transp. Co. v. City of Los Angeles, 922 F. 2d 498 (9th

44 See, e.g., City of San Jose v. Superior Court, 12 Cal. 3d 447, 462 (1974); In re Arnold & Baker Farms, 85 F. 3d 1415, 1421 (9th Cir. 1996); Milens of Cal. v. Richmond Redevelopment Agency, 665 F. 2d 906, 908-09 (9th Cir. 1982).

45 In re Scarpitti, 124 Cal. App. 3d 434, 440 (1981).

47 Sechrist v. Municipal Court, 64 Cal. App. 3d 737, 746

48 See Gonzales v. Superior Court, 180 Cal. App. 3d 1116, 1123 (1986); see also City of Salinas v. Ryan Outdoor Adver., Inc., 189 Cal. App. 3d 416, 431 (1987).

49 Meredith v. Oregon, 321 F. 3d 807 (9th Cir. 2003). 50 Id. at 819-20.

51 Dodd v. Hood River County, 136 F. 3d 1219, 1230 (9th Cir. 1998) (citation and internal quotations omitted).

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