

**FOR IMMEDIATE RELEASE****January 27, 2005**

## **COURT URGED TO ALLOW LANDOWNERS THEIR DAY IN FEDERAL COURT**

*(San Remo Hotel v. San Francisco)*

The Washington Legal Foundation (WLF) this week asked the U.S. Supreme Court to ensure that individuals claiming state or local government violation of their Fifth Amendment property rights be allowed to assert those claims in a federal court. In a brief filed in *San Remo Hotel v. City and County of San Francisco*, WLF asked the Court to overturn a lower-court decision that essentially bars assertion of Fifth Amendment claims in the federal courts and relegates such claims to the state courts. WLF filed its brief on behalf of the Chamber of Commerce of the United States and a large number of property-rights organizations.

"Congress has passed numerous laws to encourage those alleging violations of their federal constitutional rights to file their lawsuits in federal court, because Congress realizes that state courts are sometimes hostile to claims that state and local governments violated federal rights," said WLF Chief Counsel Richard Samp after filing WLF's brief. "But some federal judges have displayed their hostility to property rights by throwing unwarranted roadblocks in the path of property owners who seek to use the federal courts to vindicate their rights," Samp said. WLF also filed a brief in the case last fall, in support of a petition seeking Supreme Court review of the case. In a victory for WLF, in December the Court agreed to do so.

The case arises in connection with a San Francisco law that requires hotel owners to pay a large fee if they wish to convert their hotels to 100% tourist use. Many San Francisco hotels had supplemented their income by renting some of their rooms to residential (*i.e.*, longer term) tenants. But as demand for tourist rooms increased in the 1970s and 1980s, hotel owners had less desire to rent to residential tenants. San Francisco officials began to fear that the conversion of hotel rooms was seriously depleting San Francisco's stock of low-cost housing; they responded by adopting ordinances that imposed huge fees on hotel owners that decreased the number of units available for residential tenants.

One hotel, the San Remo Hotel, historically had allocated nine of its 62 rooms for residential tenants. San Francisco officials in 1993 granted the hotel owners permission to rent all 62 rooms to tourists, but conditioned approval on the owners' payment of a \$567,000 fee -- supposedly to compensate for the City's loss of housing units. The owners ("San Remo") paid

the fee under protest, asserting that they should not be under any special obligation to use their property to alleviate the City's housing shortage.

San Remo filed suit in federal court in 1993, alleging that the forced payment of the \$567,000 fee amounted to a taking of its property without just compensation, in violation of the Fifth Amendment's Takings Clause. The federal courts dismissed the claim on procedural grounds; they held that San Remo's Fifth Amendment claims were not yet ripe for review because San Remo had not yet sought compensation from San Francisco under state law, by filing a suit in state court.

San Remo then filed suit in state court, but raised only state-law issues and explicitly reserved its right to return to federal court to raise its Fifth Amendment claims. The California Supreme Court ultimately voted 4-3 to deny San Remo's compensation claims, holding that the California Constitution did not prohibit local governments from conditioning business permits on the payment of large exactions. San Remo then returned to federal court and attempted to re-raise its Fifth Amendment claims. The U.S. Court of Appeals for the Ninth Circuit ruled in 2004 that the doctrine of "issue preclusion" (also known as "collateral estoppel") barred San Remo from raising its Fifth Amendment claims. The appeals court held that San Remo should not be permitted a "second bite at the apple"; having had a fair opportunity to seek compensation in the state courts, San Remo should not be permitted to raise closely analogous federal claims in a subsequent federal court action, the appeals court ruled.

In its brief urging the Supreme Court to reverse, WLF argued that the effect of the Ninth Circuit's decision is to deny property owners *any* opportunity to raise their federal constitutional claims in a federal court. WLF argued that it cannot be the law that the very state-court lawsuit that property owners are required to bring for the purpose of "ripening" their Fifth Amendment claims also serves to bar the later assertion of those claims. WLF noted that the Ninth Circuit's decision conflicts with a decision of the U.S. Court of Appeals for the Second Circuit, which held that "issue preclusion" is inapplicable under these circumstances.

WLF is a public interest law and policy center that frequently litigates in support of the rights of property owners. In addition to the Chamber of Commerce of the United States, WLF's clients in this case are the Allied Educational Foundation, American Assoc. of Small Property Owners, National Taxpayers Union, Anthony Palazzolo, Property Rights Found. of America, South Carolina Landowners Assoc., Small Property Owners of San Francisco Inst., and United Lot Owners of Cambria.

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For further information, contact WLF Chief Counsel Richard Samp, 202-588-0302. A copy of WLF's brief is posted on its web site, [www.wlf.org](http://www.wlf.org).