News Release

Washington Legal Foundation
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COURT ASKED TO REQUIRE COMPENSATION FOR TAKING OF PRIVATE PROPERTY

(San Remo Hotel v. City and County of San Francisco)

This week the Washington Legal Foundation (WLF) filed a brief with the California Supreme Court, asking it to affirm that the Constitution requires the government to pay "just compensation" when a regulation has the effect of taking "private property."

This case arises from a San Francisco ordinance called the Residential Hotel Unit Conversion and Demolition Ordinance (HCO). Because the city identified what it regarded as a crisis in available housing, it issued a temporary moratorium in September 1979 that prohibited hotel owners from renting any more rooms to tourists than they had done on that date. Before September 23, 1979, San Remo could rent to tourists or tenants, as it wished. That "temporary" moratorium eventually took on a life of its own: it was enacted as a permanent ordinance and persists, with amendments, to this day. Supposedly "in order to accommodate hotel owners who desire to convert to permanent tourist use," the HCO "allows an owner to convert by replacing the lost housing." The lost housing is replaced, according to the city, by imposing a fee on owners who want to increase the number of rooms available for rent to tourists. That fee is exorbitant: it equals between 40% and 80% of the cost of replacing that unit elsewhere in the city.

The HCO hit the San Remo Hotel particularly hard. San Remo had long rented most of its rooms to tourists. But in 1979 when the city surveyed all hotels to determine the proportion of tourist and long-term tenant use, San Remo's hotel manager mistakenly reported that the hotel rented all of its rooms to long-term tenants. Consequently, when San Remo later attempted to "convert" its rooms for tourist use, the city demanded $567,000. San Remo paid the fee, protested administratively, and initiated this lawsuit to recover the property taken because of the HCO. After a complicated set of federal and state proceedings, San Remo lost in the trial court but prevailed in the court of appeal. The city then appealed to the California Supreme Court, where the case is now pending.

In its brief filed with the court, WLF raised three arguments. First, it argued that U.S. Supreme Court decisions interpreting the Takings Clause have reduced the discretion of local land use authorities, such as those responsible for administering the HCO. Contrary to San Francisco's assertions, Supreme Court case law does not leave local land use authorities free to trample on property rights. Second, WLF demonstrated that monetary exactions, government demands for the payment of money as a condition for obtaining a government permit, require heightened judicial scrutiny. If it were otherwise, the government could use its permitting authority to impose unwarranted financial conditions on the property owner seeking permission to use or develop his property. Third, WLF pointed out that the city cannot evade its constitutional duty to pay compensation through the simple device of redefining San Remo's property rights. Otherwise, the city's power to define property rights could be used to "opt out" of the Takings Clause.

"Legitimate business owners should not have to pay outrageous sums of money for the privilege of using their own property," said Shawn Gunnarson, WLF's Senior Counsel for Litigation Affairs. "The U.S. Supreme Court has condemned this practice as 'an out-and-out plan of extortion.' We trust that the California Supreme Court will see San Francisco's hotel conversion ordinance for what it is and require the city to pay fair compensation."

The Washington Legal Foundation is a public interest law and policy center with supporters in all fifty states. It devotes a significant portion of its resources to defending and promoting the principles of free enterprise and individual rights.

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