



San Remo Hotel in San Francisco  
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## **U.S. SUPREME COURT TO HEAR SAN REMO HOTEL v. SAN FRANCISCO**

### **Twelve-year Battle Challenges City Law as Unconstitutional Taking of Private Property**

SAN FRANCISCO, December 10 — The U.S. Supreme Court announced today it will hear a 12-year David and Goliath legal battle waged by owners of an historic 62-room San Francisco hotel against city regulations and fees they claim restrict private property rights in violation of the Fifth Amendment.

This latest judicial decision in *San Remo Hotel v. City and County of San Francisco* grants the hotel's petition for certiorari to review a ruling by the U.S. Court of Appeals for the Ninth Circuit earlier this year. The case had previously been before the Ninth Circuit in 1998 and the California Supreme Court in 2002.

In upholding a \$567,000 fee imposed in 1993 on San Remo Hotel owners, brothers Tom and Robert Field, the lower courts accepted the view that the city's hotel "conversion" ordinance, enacted in 1990, advanced the public good and met the test for constitutionality.

The controversial hotel law requires certain smaller hotels to replace or to pay for any housing "lost" when rooms are not reserved for low-income residents. The courts rejected San Remo's argument that a more stringent test was required to prevent an unconstitutional taking of private property and that the large fee was disproportionate to any harm that would be caused by tourist use of available rooms.

According to San Remo attorneys Paul Utrecht and Andrew Zacks, "There is a nationwide split of authority in lower courts on the right test for constitutionality of local legislation. In this case, the city is forcing a few property owners to provide low-cost housing instead of spreading the cost equally among all taxpayers."

After paying the fee under protest, the Fields were permitted to continue renting rooms primarily to tourists rather than to low-income residents. The city also insisted the brothers offer lifetime leases to their long-term residential tenants, who had already been welcome indefinitely.

(more)

The Fields sued the city in state and federal court in 1993, claiming the hotel law was an unconstitutional restriction enacted long after they purchased the San Remo in 1971 and proceeded with two decades of painstaking and expensive renovations.

Utrecht and Zacks note the San Remo case raises other key questions with broad implications: If property owners challenge an ordinance as unconstitutional, can federal courts first tell them to seek compensation in state courts before federal courts will consider their claim? And if state courts deny compensation, can the federal courts say that federal claims are barred by the state court decision?

National organizations siding with the San Remo in amicus briefs include the Chamber of Commerce of the United States, representing three million business and professional organizations; the National Association of Realtors, representing one million members; and the National Association of Homes Builders, representing more than 215,000 members. Additional amicus supporters of the hotel include the Washington Legal Foundation and Pacific Legal Foundation.

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**AVAILABLE MATERIALS:**

Hotel fact sheets, background, chronology, petition for hearing, hotel photos

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