No. 24A-_____

IN THE

Supreme Court of the United States

SOUTHERN CALIFORNIA EDISON COMPANY AND
SOUTHERN CALIFORNIA GAS COMPANY,

Applicants,

v.

ORANGE COUNTY TRANSPORTATION AUTHORITY,

Respondent.

APPLICATION FOR AN EXTENSION OF TIME WITHIN WHICH TO FILE A PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE NINTH CIRCUIT

JONATHAN C. BOND
ADDISON W. BENNETT
GIBSON, DUNN & CRUTCHER LLP
1700 M Street, N.W.
Washington, D.C. 20036

DAVID A. BATTAGLIA
JULIAN W. POON
Counsel of Record
JAMES L. ZELENAY JR.
PATRICK J. FUSTER
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
(213) 229-7000
jpoon@gibsondunn.com

Counsel for Applicants Southern California Edison Company and Southern California Gas Company

TO THE HONORABLE ELENA KAGAN, ASSOCIATE JUSTICE OF THE SUPREME COURT OF THE UNITED STATES AND CIRCUIT JUSTICE FOR THE NINTH CIRCUIT:

Under this Court's Rule 13.5, applicants Southern California Edison Company and Southern California Gas Company respectfully request a 60-day extension of time, to and including January 16, 2025, within which to file a petition for a writ of certiorari to review the judgment of the United States Court of Appeals for the Ninth Circuit.* The court of appeals entered its judgment on March 13, 2024, App., *infra*, 1a, and denied applicants' timely petition for panel rehearing and rehearing en banc on August 19, 2024, *id.* at 23a. Unless extended, the time within which to file a petition for a writ of certiorari will expire on November 17, 2024. The jurisdiction of this Court would be invoked under 28 U.S.C. § 1254(1). Counsel for respondent Orange County Transportation Authority does not oppose this request.

1. This case presents an important and recurring question: whether the Fifth Amendment's Takings Clause guarantees just compensation when the government forces a utility to relocate its facilities (pipes, poles, etc.) to make way for a public project. This Court has held that the government must pay the utility's relocation costs caused by a "proprietary" (as opposed to a "governmental") use of the streets. *Los Angeles* v. *Los Angeles Gas & Electric Corp.*, 251 U.S. 32, 38-39 (1919). Respondent required applicants to relocate some of their facilities for the construction of a streetcar line, which longstanding precedent classifies as proprietary. The court

---

* Under this Court's Rule 29.6, applicant Southern California Edison Company states that it is a wholly owned subsidiary of Edison International, a publicly held company. Applicant Southern California Gas Company states that it is a wholly owned subsidiary of Pacific Enterprises, which is wholly owned by Sempra Energy, a publicly held company.

of appeals held that respondent need not pay compensation here because the court could posit a "public purpos[e]" for the project based on respondent's "statutory authority" to construct a streetcar line. App., *infra*, 7a, 17a. That holding conflicts with *Los Angeles Gas & Electric* and decisions of lower courts that have correctly applied this Court's precedent.

a. Applicants are investor-owned utilities that have long maintained facilities in the streets of Santa Ana, California, under franchise agreements that they signed with the city in 1937 and 1938. App., *infra*, 4a-5a. In 2016, respondent required the utilities to relocate their facilities to make way for a 4.15-mile streetcar line at their own expense—estimated to exceed $14 million collectively. *Ibid*. The utilities brought suit under 42 U.S.C. § 1983, seeking a declaration that the Constitution guaranteed them a right to just compensation under the Takings Clause. *Ibid.*

The district court granted summary judgment to respondent, holding that the Takings Clause did not prevent respondent from shifting onto applicants the cost of relocating their facilities to accommodate its streetcar project. App., *infra*, 5a. The court concluded that the project qualified as governmental under *Los Angeles Gas & Electric* because the California Legislature had made findings about the importance of publicly operated mass transit and because respondent had statutory authority to administer the streetcar. *Id*. at 6a-7a.

b. The court of appeals affirmed. App., *infra*, 1a-22a. In its view, applicants lacked "a property interest in maintaining their facilities at their specific locations in the face of [respondent's] efforts to construct a streetcar line." *Id.* at 9a. The court characterized respondent's construction of a streetcar line as an exercise of "its state-delegated authority" to "serve a public interest." *Id*. at 10a. And the court interpreted *Los Angeles Gas & Electric* to require compensation for relocation costs only when a public project "lack[s] any public-facing rationale," causing it to lose "the status of 'governmental.'" *Id.* at 17a. The court deferred to generalized legislative findings that mass transit "serves valuable public purposes" as a basis to deny just compensation and held that applicants "must foot the bill" for the relocation. *Ibid*.

2. The Ninth Circuit's decision that the Takings Clause allows respondent to offload the costs of its project onto applicants warrants this Court's review.

a. The court of appeals' decision conflicts directly with decisions of at least four state supreme and appellate courts that have interpreted *Los Angeles Gas & Electric* to guarantee just compensation when the government forces a utility operating under a franchise to relocate for a transit project. *Baltimore* v. *Baltimore Gas & Electric Co.*, 192 A.2d 87, 95 (Md. 1963); *State ex rel. Speeth* v. *Carney*, 126 N.E.2d 449, 460 (Ohio 1955); *New York* v. *New York Telegraph Co.*, 14 N.E.2d 831, 832-833 (N.Y. 1938); *Postal Telegraph-Cable Co.* v. *San Francisco*, 199 P. 1108 (Cal. Ct. App. 1921); see *Milwaukee Electric Railway & Light Co.* v. *Milwaukee*, 245 N.W. 856, 858 (Wis. 1932) (describing settled rule for public-transit cases). In breaking from the traditional understanding of *Los Angeles Gas & Electric*, the Ninth Circuit joined a troubling yet growing number of courts that have either overtly rejected or attempted to narrow the governmental-proprietary distinction that case drew. *Riverside County Transportation Commission* v. *Southern California Gas Co*., 54 Cal. App. 5th 823, 869 (2020); *City of Taylor* v. *Detroit Edison Co.*, 715 N.W.2d 28, 35 (Mich. 2006); *Vermont Gas Systems, Inc.* v. *Burlington*, 571 A.2d 45, 47-48 (Vt. 1989); *Denver* v. *Mountain

States Telephone & Telegraph Co., 754 P.2d 1172, 1173-1174 (Colo. 1988); *Northwest Natural Gas Co.* v. *Portland*, 711 P.2d 119, 126 (Or. 1985). The decision below thus entrenches a conflict over the continuing vitality of *Los Angeles Gas & Electric*.

b. The Ninth Circuit's decision also conflicts with this Court's decisions—starting with *Los Angeles Gas & Electric* itself. There, this Court recognized that utilities operating under a franchise agreement have a property right to maintain their facilities as the "earlier and lawful occupant of the field" with priority over later-in-time "proprietary" projects by public entities. 251 U.S. at 38-39. This Court also has long treated "street railway[s]" as proprietary even when administered "for what the State conceives to be [a] public benefit." *Helvering* v. *Powers*, 293 U.S. 214, 223, 225 (1934). Although the Court has declined to apply the governmental-proprietary distinction in other contexts, *Los Angeles Gas & Electric* remains binding precedent in this area, "regardless of whether subsequent cases have raised doubts about [its] continuing vitality." *Hohn* v. *United States*, 524 U.S. 236, 252-253 (1998). The court of appeals here, however, attempted to distinguish *Los Angeles Gas & Electric* into oblivion and confine its guarantee of just compensation to cases when the government is so tongue-tied that it cannot articulate "any public-facing rationale." App., *infra*, 17a. That effort to hollow out a holding of this Court strikes a blow to vertical *stare decisis*: that this Court itself has the "prerogative alone to overrule one of its precedents." *State Oil Co.* v. *Khan*, 522 U.S. 3, 20 (1997).

The court of appeals' reinvention of the governmental-proprietary distinction also cannot be squared with this Court's other Takings Clause precedents. The Ninth Circuit acknowledged that forced relocation of utility facilities is "government action that 'physically appropriates' property" and ordinarily would be "treated as 'a *per se* taking' requiring just compensation." App., *infra*, 8a (quoting *Cedar Point Nursery* v. *Hassid*, 594 U.S. 139, 149 (2021)). But the court held that applicants do not have *any* property right to maintain their facilities against forced relocation. *Id.* at 9a. That conclusion contravenes the "traditional property law principles" reflected in *Los Angeles Gas & Electric*. *Tyler* v. *Hennepin County*, 598 U.S. 631, 638 (2023) (citation omitted). In suggesting that legislative findings could simply deem a streetcar line as governmental, the court of appeals also ignored this Court's recent admonition that there is no "special deference for legislative takings." *Sheetz* v. *County of El Dorado*, 601 U.S. 267, 277 (2024). And its overarching reasoning that applicants are not entitled to compensation because respondent "invoked the public right to use the streets for the public benefit," App., *infra*, 10a, sets the Takings Clause at war with itself: In the Ninth Circuit, the same "public purpose" that is a prerequisite for the government to take property *with* just compensation, *Kelo* v. *New London*, 545 U.S. 469, 480 (2005), will be interposed as an excuse to take property *without* paying a cent.

3. Additional time is necessary to permit counsel for applicants to prepare a petition that would be helpful to the Court. Counsel have had—and will continue to have—significant professional responsibilities in other time-sensitive matters, and preexisting professional and personal travel plans, in the period before and after the current November 17 deadline.

4. Counsel for respondent does not oppose the requested extension.

Accordingly, applicants respectfully request that their time to file a petition for a writ of certiorari be extended by 60 days, to and including January 16, 2025.

Respectfully submitted.

/s/ Julian W. Poon

JONATHAN C. BOND
ADDISON W. BENNETT
GIBSON, DUNN & CRUTCHER LLP
1700 M Street, N.W.
Washington, D.C. 20036

DAVID A. BATTAGLIA
JULIAN W. POON
Counsel of Record
JAMES L. ZELENAY JR.
PATRICK J. FUSTER
GIBSON, DUNN & CRUTCHER LLP
333 South Grand Avenue
Los Angeles, CA 90071
jpoon@gibsondunn.com

Counsel for Applicants Southern California Edison Company and Southern California Gas Company

October 30, 2024