No.

In the Supreme Court of the United States

ARRON BENEDETTI; ARTHUR BENEDETTI;
ESTATE OF WILLIE BENEDETTI,
Petitioners,

v.

COUNTY OF MARIN, CALIFORNIA, ET AL.
Respondents.

On Petition For A Writ Of Certiorari
To The Court Of Appeal Of The State Of California
First Appellate District, Division Four

PETITION FOR A WRIT OF CERTIORARI

JOHANNA B. TALCOTT
Pacific Legal Foundation
4440 PGA Blvd., Suite 307
Palm Beach Gardens, FL
33410

DEBORAH J. LA FETRA
Pacific Legal Foundation
3100 Clarendon Blvd.,
Suite 1000
Arlington, VA 22201

JEREMY TALCOTT
Counsel of Record
Pacific Legal Foundation
555 Capitol Mall,
Suite 1290
Sacramento, CA 95814
(916) 419-7111
jtalcott@pacificlegal.org

Counsel for Petitioners

QUESTIONS PRESENTED

Owners of agriculturally zoned land in Marin County, California, may lawfully build a single-family residence on their property. But the County refuses to issue a residential building permit unless the landowner records a restrictive covenant limiting ownership to commercial farmers who actively and directly farm the land. The covenant runs with the land in perpetuity, binding all future owners. The California Court of Appeal upheld the requirements, finding that forcing property owners to be commercial farmers furthers the County's goal of "maintain[ing] agriculture as a viable industry." The questions presented are:

1. Whether Marin County may, under its power to promote the public health, safety, morals, or general welfare, compel private landowners to enter and permanently remain in a government-chosen occupation as a condition of a residential development permit?

2. Whether the Due Process Clause of the Fourteenth Amendment—which protects the fundamental right to "engage in any of the common occupations of life," *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923)—also encompasses the fundamental right *not* to be forced into an occupation of the government's choosing?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioners Arron Benedetti, Arthur Benedetti, and the Estate of Willie Benedetti were the plaintiffs and appellants below. Petitioners are natural persons or an estate.

Respondents are County of Marin, California, who was respondent below, and California Coastal Commission, who was Real Party in Interest below.

STATEMENT OF RELATED CASES

These proceedings are directly related to the above-captioned case under Rule 14.1(b)(iii):

Benedetti v. County of Marin, No. CIV2103128, Marin County Superior Court (Feb. 23, 2024).

Benedetti v. County of Marin, No. A170403, California Court of Appeal (Aug. 29, 2025).

Benedetti v. County of Marin, California Supreme Court, No. S293396 (Dec, 10, 2025).

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PETITION FOR A WRIT OF CERTIORARI

Brothers Arron and Arthur Benedetti are plumbers. They inherited agriculturally zoned land in Marin County, California, on which they wish to build a home for Arthur to live out his retirement years. App. 6a. Such a residence is designated by the County as a "principal permitted use" of the property and allowed under the zoning code. App. 4a-5a. But the County refuses to issue a building permit unless the brothers agree to operate a commercial farming enterprise on the land in perpetuity, or contract with someone else to do so. App. 5a. The Benedettis are plumbers. They are not farmers, have never been farmers, and have no desire to become farmers. They also do not seek to convert the land to a different zoning class. App. 6a. But unless they agree to a restrictive covenant forever requiring them and any future owners to be "actively and directly engaged" in commercial agriculture, App. 5a, the County will never permit them to build one house on their property. The California Court of Appeal upheld this requirement as an acceptable exercise of the police power, rejecting multiple constitutional challenges. App. 21a-23a, 28a.

This petition presents two interlocking constitutional questions that this Court has never answered. The first is structural: does the police power include the power to conscript private citizens into commercial occupations of the government's choosing?[1]

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[1] While broad, the police power does have limitations. *United States v. Sharpe*, 470 U.S. 675, 696 (1985) (Marshall, J., concurring in the judgment) ("[T]he Constitution imposes certain

The second is individual: even if the police power were broad enough to allow government to impose such a mandate, the liberty protected by the Fourteenth Amendment's Due Process Clause encompasses "the right of the individual to . . . engage in any of the common occupations of life." *Meyer v. Nebraska*, 262 U.S. 390, 399 (1923). That right is fundamental—rooted in common law, confirmed by the Fourteenth Amendment, and inseparable from the concept of ordered liberty. *Greene v. McElroy*, 360 U.S. 474, 506-07 (1959); *Allgeyer v. Louisiana*, 165 U.S. 578, 589-90 (1897) ("The 'liberty' mentioned in that [Fourteenth] amendment . . . is deemed to embrace the right of the citizen . . . to live and work where he will; to earn his livelihood by any lawful calling; to pursue any livelihood or avocation[.]"); *Phillips v. Vandygriff*, 711 F.2d 1217, 1222 (5th Cir. 1983) ("It requires no argument to show that the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the [fourteenth] Amendment to secure.") (alteration in original; quoting *Truax v. Raich*, 239 U.S. 33, 41 (1915), *clarified on rehearing*, 724 F.2d 490 (5th Cir. 1984)). Its necessary corollary—the inverse right not to be compelled by government into an occupation not of one's choosing—is equally fundamental. *Cf. Boy*

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limitations on police powers no matter how reasonably those powers have been exercised."); *New State Ice Co. v. Liebmann*, 285 U.S. 262, 302 (1932) (constitutional protection of due process serves as a limitation on the otherwise plenary police power); *AmeriSource Corp. v. United States*, 525 F.3d 1149, 1154 (Fed. Cir. 2008) ("As expansive as the police power may be, it is not without limit. The limits, however, are largely imposed by the Due Process Clause.").

Scouts of Am. v. Dale, 530 U.S. 640, 648 (2000) (the right to associate includes the inverse right to refrain from associating); *Moore v. Michigan*, 355 U.S. 155, 161 (1957) (criminal defendant's constitutional right to be represented by counsel includes the right *not* to be represented). The unconstitutional conditions doctrine reinforces both: government may not leverage its permitting authority to extract the surrender of a constitutional right that it could not override by direct command. Because the government could not simply order the Benedettis to become commercial farmers, it may not accomplish the same result by conditioning a building permit on their agreement to do so. *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604 (2013) (The unconstitutional conditions doctrine exists precisely to prevent government from leveraging its permit authority to "coerc[e] people into giving [rights] up.").

The Court of Appeal's ruling invites additional—and previously unheard of—governmental authority over the occupational choices of private citizens. *See Frost & Frost Trucking Co. v. Railroad Comm'n*, 271 U.S. 583, 594 (1926) ("If the state may compel the surrender of one constitutional right as a condition of its favor, it may, in like manner, compel a surrender of all. It is inconceivable that guaranties embedded in the Constitution of the United States may thus be manipulated out of existence.").

The Court should grant certiorari to address two constitutional questions this Court has never answered—whether the police power extends to compelling private citizens into a government-chosen occupation, and whether the individual has a fundamental constitutional right not to be forced into such an occupation.

OPINIONS BELOW

The decision of the California Court of Appeal is published at 113 Cal. App. 5th 1185, 1190 (2025), reproduced in Petitioner's Appendix at App. 1a. The superior court's judgment and order dismissing the claims is reproduced at App. 30a. The California Supreme Court's order denying review is reproduced at App. 55a.

JURISDICTION

On December 10, 2025, the California Supreme Court denied a timely Petition for Review. On February 5, 2026, this Court granted an application for an extension of time to file a petition for writ of certiorari, to and including April 24, 2026. This case arises under the Fifth and Fourteenth Amendments to the United States Constitution. This Court has jurisdiction under 28 U.S.C. § 1257(a).

CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED

Section 1 of the Fourteenth Amendment to the U.S. Constitution provides in pertinent part:

> No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny any person within its jurisdiction the equal protection of the laws.

Relevant portions of Marin County's Land Use Plan and Local Coastal Program are reprinted at App. 56a-83a.

STATEMENT OF THE CASE

A. Factual Background

1. Arron and Arthur Benedetti are professional plumbers. They inherited two contiguous parcels of land totaling 267 acres in the rolling coastal hills of Marin County from their father, Willie Benedetti, who owned and ran a successful turkey farming operation. App. 6a. Willie Benedetti shut down his farming operation and sold the stock and equipment prior to his death. *Ibid.* Arron lives in the sole home on the property, that he shared with his father. *Ibid.* Arthur wishes to build his own home, as permitted by the existing zoning, to spend the rest of his days living on the land his family has owned for generations. *Ibid.* But constructing that home triggers an extraordinary regulatory burden: The County would require the Benedetti brothers to agree to actively farm or ranch the land forever. App. 5a.

2. In 2021, Marin County amended its Local Coastal Program (LCP) to prohibit construction of an additional dwelling unit on properties in the Coastal Agricultural Production Zone (C-APZ), where the Benedetti land is located, unless the landowner records a restrictive covenant[2] that runs with the land and obligates the owner (and every future owner) to remain "actively and directly engaged" in commercial agriculture. *Ibid.* Under the LCP, the only alternative is to lease the land to a commercial agricultural

[2] Restrictive covenants are recognized as constitutionally protected property interests under California law. *S. Cal. Edison Co. v. Bourgerie*, 9 Cal. 3d 169, 172 (1973). Once recorded, such covenants run with the land, binding future owners and creating an enforceable property interest that benefits the covenantee—in this case, the County.

producer. *Ibid.* Either way, the Benedettis are forced into either active farming or managing farmers and farmland,[3] occupations for which they have no training, no expertise, and no interest. App. 6a. These requirements apply regardless of the landowner's suitability or interest in being a farmer or rancher. They apply whether or not farming is commercially feasible. They even apply if the land is not agriculturally viable.[4] App. 4a-6a. Unless the

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[3] The lease option offers little respite from the direct farming requirement given California law that places affirmative duties on landowners in the management and maintenance of their property, potentially making them liable for injuries or hazards, even without personal involvement in the instrumentalities of harm. *See, e.g.*, Cal. Civil Code § 1714 ("Everyone is responsible, not only for the result of his or her willful acts, but also for an injury occasioned to another by his or her want of ordinary care or skill in the management of his or her property or person, except so far as the latter has, willfully or by want of ordinary care, brought the injury upon himself or herself."); *Staats v. Vintner's Golf Club, LLC*, 25 Cal. App. 5th 826, 833 (2018) (interpreting Section 1714 to require that "a person who controls property must 'inspect [the premises] or take other proper means to ascertain their condition' and, if a dangerous condition exists that would have been discovered by the exercise of reasonable care, has a duty to give adequate warning of or remedy it" (citation omitted)). "This duty to maintain land in one's possession in a reasonably safe condition exists even where the dangerous condition on the land is caused by an instrumentality that the landowner does not own or control." *Alcaraz v. Vece*, 14 Cal. 4th 1149, 1156 (1997).

[4] Marin County describes a vast array of risks inherent in commercial farming, including "wildfires, droughts, floods, pandemics, crop pests and diseases, food safety-related outbreaks, new regulations, new competitors, labor availability and cost, price drops, tariffs and other trade policies, and rising costs for fuel, equipment, water and other inputs," any one of which can "deal a damaging blow." Marin Cnty. Dep't of Agriculture,

Benedetti brothers agree to a restrictive covenant that compels their participation in commercial farming forever (or contract with someone to do so on their behalf), the County will not grant the permits necessary to build Arthur's home. App. 5a.

The Benedetti brothers are plumbers. They have never been commercial farmers, nor do they wish to become commercial farmers. Arthur's desired home would be consistent with the existing zoning of the property. App. 4a. It does not affect surrounding land uses or interfere with any agricultural activity—the land is already zoned exclusively for agriculture and agricultural accessory structures and activities. *Ibid.* The "agriculture" zone authorizes dwellings for the landowner, "intergenerational family," and farm workers, as well as other related structures such as processing facilities and airstrips. App. 4a-5a. Nevertheless, the County refuses to issue the Benedetti brothers a permit for the development of Arthur's home unless they personally undertake commercial farming themselves or forever commit to a commercial agricultural lease.[5] App. 5a. The County maintains that this restriction is necessary to preserve the area's agricultural character by deterring any development that contributes to a market for residential real estate in agricultural areas. App. 19a. This justification has

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Weights & Measures, *Economic Contributions of Marin Cnty. Agriculture* at 15 (July 2025), https://tinyurl.com/2rnyu2yu.

[5] Meanwhile, the National Park Service purchased and shut down a dozen multigenerational farms in Marin County against the owners' wishes, to settle lawsuits by environmental groups who prefer open space to agricultural use. *Point Reyes lawsuits to force closures after decade-long battles*, AgDaily (Mar. 25, 2025) ("the agreement will result in a reduction of nearly 17,000 acres of commercial ranching"), https://tinyurl.com/42pd32fp.

no basis in any direct land-use impact of the proposed home and instead employs an unprecedented exercise of regulatory authority to further the County's preferred policy outcome: land use rules that are directed not at the land but at the landowner himself.

B. Legal Proceedings

In September 2021, the Benedetti brothers, individually and as representatives and executors of their father's estate, sued Marin County and the California Coastal Commission in state court under 42 U.S.C. § 1983.[6] App. 6a-7a. They claimed that, under the Fourteenth Amendment's Due Process Clause, the LCP's perpetual covenant requirement unconstitutionally conditioned development of their property on their permanently surrendering the right to be free from compelled entry into a state-chosen profession. *Ibid.* The Benedettis also claimed that the provisions facially violate the Fifth Amendment because conditioning a residential building permit on a perpetual obligation to engage in a government selected occupation cannot satisfy the nexus and proportionality standards of *Nollan v. California Coastal Commission*, 483 U.S. 825 (1987), and *Dolan v. City of Tigard*, 512 U.S. 374 (1994). App. 6a-7a.

The trial court rejected Petitioners' constitutional claims on the merits, applying rational basis review to reject the due process claim and concluding that the Benedettis' facial *Nollan/Dolan* claim could not proceed because the condition operated through a permit process, requiring an application to "ripen" the challenge. App. 53a-54a.

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[6] Other state claims are not at issue in this Petition.

The California Court of Appeal affirmed in a published opinion. App. 1a. The court applied rational basis review to the Benedettis' due process claim, relying exclusively on *Nash v. City of Santa Monica*, which upheld a requirement preventing demolition or conversion of rental units without a permit and rejected a landlord's argument that the law unconstitutionally conditioned his right to stop being a landlord on relinquishing his right not to sell his property. 37 Cal. 3d 97, 106 (1984). Concluding that the perpetual covenant requirement "does not obligate landowners to work in agriculture; they are only limited in their ability to work in fields other than agriculture on a specific property," the Court declined to apply strict scrutiny. App. 26a. It likewise found no "involuntary servitude" concerns because the requirement "only obligates the landowners to engage in agriculture, which is an occupation quintessentially arising out of and attached to their land," and emphasized that a landowner is "free to lease the property to someone else to engage in agriculture" or may "choose to sell the property if they no longer wish to engage in agriculture." *Ibid.* On that basis, the court held that the covenant does not facially violate the Benedettis' fundamental right to work (or not work) because, in its view, there is a reasonable relationship between the condition and the Defendants' interests in "the maintenance of agriculture as a viable industry in the coastal zone by preventing the incursion of residential development and residential property values into agricultural lands . . . ." App. 26a-27a.

The court confirmed that the Benedettis could raise facial *Nollan/Dolan* challenges to legislative permit conditions, *see Sheetz v. Cnty. of El Dorado*, 601 U.S.

267, 276-77 (2024), but concluded that the unconstitutional conditions claim failed on the merits because the perpetual covenant requirement "easily" met *Nollan*'s essential nexus test by "separating agricultural from non-agricultural uses and preventing residential use values from driving up the costs of agricultural land." App.19a. The court further held that the covenant requirement satisfied *Dolan*'s rough proportionality test "on its face" because *any* residential development not used to support ongoing agriculture, no matter the size or type, reduced, by some measure, the "incremental" residential development pressures posed by even one additional non-agricultural dwelling. App. 22a-23a.

The California Supreme Court denied review on December 10, 2025. App. 55a.

REASONS FOR GRANTING THE PETITION

This Court's property and occupational liberty jurisprudence operates on the core assumption that individuals are able to voluntarily enter—or exit—a regulated market or occupation. The Court relies on that individual right to justify applying the deferential rational basis standard to intrusive regulation of commercial enterprises. For example, in *Yee v. City of Escondido*, 503 U.S. 519, 527, 531 (1992), the Court upheld financially burdensome regulation on the grounds that the property owner voluntarily chose to enter the rental market and could leave it at will. *See id.* at 528 ("A different case would be presented were the statute, on its face or as applied, to compel a landowner over objection to rent his property or to refrain in perpetuity from terminating a tenancy."). This Court's decisions thus rest on the principle that if individual liberty and autonomy

mean anything, then the government cannot coerce you into practicing a certain trade or business. It is simply beyond government's power to compel someone into a field they do not wish to be in, nor can it force someone to continue to practice a certain occupation if that person no longer wishes to engage in it.

Recently, however, states and local governments are asserting their broad police powers to strong-arm citizens to enter trades and occupations they do not wish to enter or restricting their ability to leave certain businesses. These aggressive and novel uses of the police power require a reevaluation of the Court's foundational assumption of free entry and exit. California leads the way. For example, San Francisco taxes property owners who allow their property to remain vacant—that is, they chose not to become or remain landlords. Treasurer & Tax Collector, City and County of San Francisco, *Commercial Vacancy Tax*.[7] And cities increasingly limit property owners' right of alienation by requiring the owner first offer it for sale to tenants. *See, e.g.*, Chicago Municipal Code §§ 5-10-030, 5-10-060; Maryland Renters' Rights and Stabilization Act of 2024.[8]

This case, from California's Marin County, is the latest and most egregious example.

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[7] https://tinyurl.com/ep9mf3wf (visited Apr. 23, 2026). *See also* S.F. Bus. & Tax Regs. Code, §§ 2950-2963 ("Empty Homes Tax"), the validity of which is currently being litigated. *Debbane v. City & Cnty. of San Francisco*, No. A172067 (Cal. Ct. App. 2025).

[8] https://tinyurl.com/5fhhxucn (visited Apr. 23, 2026).

I. Requiring Landowners to Change Their Occupation to Obtain a Building Permit Exceeds Even the Broadest Conception of the Police Power

A typical "agricultural easement" in California limits non-agricultural use of the land and may require dedication of agricultural or conserved land in mitigation of development on agricultural land. *See Building Indus. Ass'n of Cent. Cal. v. Cnty. of Stanislaus*, 190 Cal. App. 4th 582, 592, 594 (2010). An "agricultural conservation easement" is defined as "an interest in land, less than fee simple, that represents the right to prevent the development or improvement of the land, as specified in Section 815.1 of the Civil Code,[9] for any primary purpose other than agricultural production." *V Lions Farming, LLC v. Cnty. of Kern*, 100 Cal. App. 5th 412, 422 (2024). *See also Matter of Smith v. Town of Mendon*, 4 N.Y.3d 1, 10 (2004) (footnote added) (conditioning site plan approval on owner's acceptance of a conservation easement). While this limits other use of the land, it does not affirmatively require agricultural use of the land by the landowner. Marin County appears to be the first jurisdiction to leverage its power to place conditions on development by making personal demands on the *landowner*.

The novelty of this law is alone reason enough for this Court's intervention. Sometimes "the most telling indication of [a] severe constitutional problem . . . is the lack of historical precedent" for Congress's

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[9] Cal. Civil Code § 815.1 states that the purpose of a "conservation easement" is "to retain land predominantly in its natural, scenic, historical, agricultural, forested, or open-space condition."

action. *Free Enter. Fund v. Public Co. Acct. Oversight Bd.*, 561 U.S. 477, 505 (2010) (internal quotation marks omitted). This Court has acknowledged that the evidence to be presented in support of a legislative enactment "var[ies] . . . with the novelty and plausibility of the justification raised." *Nixon v. Shrink Missouri Gov't PAC*, 528 U.S. 377, 391 (2000); *Poe v. Ullman*, 367 U.S. 497, 554 (1961) (Harlan, J., dissenting) ("[C]onclusive, in my view, is the utter novelty of this enactment.") (criminalizing contraception). Here, the County has imposed a new and novel requirement—purportedly under its power to regulate land-use—that targets not the land, but the landowner, and conscripts that landowner into a government-chosen commercial activity in perpetuity. That previously unknown use of the police power raises significant constitutional concerns and warrants review before this Court.

A. The Police Power Cannot Encompass Compelling Individuals Into State-Chosen Occupations to Achieve Land Use Goals

The foundational rule of police power jurisprudence—stated by this Court in *Mugler v. Kansas*, 123 U.S. 623 (1887), and reaffirmed consistently since—is that a purported exercise of the police power must have a real or substantial relation to public health, public morals, or public safety, and, if none is found, courts must "so adjudge, and thereby give effect to the Constitution." *Id.* at 661. Courts are not "bound by mere forms, nor are they to be misled by mere pretenses"; they are "under a solemn duty—to look at the substance of things." *Ibid.*

This Court applied that principle in the zoning context in *Nectow v. City of Cambridge*, 277 U.S. 183, 187-88 (1928), vacating a zoning action that had "no foundation in reason and is a mere arbitrary or irrational exercise of power having no substantial relation to the public health, the public morals, the public safety or the public welfare in its proper sense." *See also Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 395 (1926) (zoning provisions must have a "substantial relation to the public health, safety, morals, or general welfare"). And in *State of Washington ex rel. Seattle Title Trust Co. v. Roberge*, 278 U.S. 116, 121 (1928), the Court stated the affirmative command: "Legislatures may not, under the guise of the police power impose restrictions that are unnecessary and unreasonable upon the use of private property or the pursuit of useful activities."

State courts have thus applied this Court's formulation to invalidate zoning regulations as beyond the police power. *See, e.g.*, *Trs. of Union Coll. in Town of Schenectady in State of N.Y. v. Members of Schenectady City Council*, 91 N.Y.2d 161, 167 (1997) (holding that excluding educational uses from a district bore no substantial relation to the public health, safety, morals or general welfare, placing the regulation beyond the City's zoning authority); *see also City of Youngstown v. Kahn Bros. Bldg. Co.*, 112 Ohio St. 654, 666 (1925), *disapproved of by Vill. of Hudson v. Albrecht, Inc.*, 9 Ohio St. 3d 69 (1984) (invalidating a zoning ordinance as having "no relation to the public health, safety, morals, and welfare," and therefore outside of the inherent police power of the state).

The Marin covenant satisfies none of these requirements. The Court of Appeal acknowledged the

point: the covenant's purpose "is not mitigating the general impacts of residential development." App. 20a. Its purpose is to advance the County's policy preference for "maintain[ing] agriculture as a viable industry" in the Coastal Zone by mandating that persons who hold title to C-APZ land operate commercial farming enterprises. App. 26a-27a. That is not the regulation or mitigation of harmful activity that threatens "the public health, the public morals, the public safety or the public welfare." It is the conscription of persons into a government-favored commercial enterprise.[10] Those are categorically different exercises of governmental authority.

The underlying C-APZ zoning already restricts the Benedettis' land to agricultural and supporting uses, with residential dwellings as a principal permitted use. App. 4a. The covenant does not change any of that. What it adds is a personal obligation on the human being who holds title. Even the most extensive understanding of the police power cannot extend this far. "Constitutional powers can never transcend constitutional rights. The police power is subject to the limitations imposed by the Constitution upon every power of government; and it will not be suffered to invade or impair the fundamental liberties of the

[10] Governments retain legitimate ways to favor certain industries over others, including tax treatment, *Fox v. Standard Oil Co. of N.J.*, 294 U.S. 87, 100 (1935), and subsidies, *see, e.g.*, *DCP Farms v. Yeutter*, 957 F.2d 1183, 1185 (5th Cir. 1992) (describing federal farm subsidy programs); *Grace v. The Walt Disney Co.*, 93 Cal. App. 5th 549, 560 (2023) (upholding city subsidy for selected businesses subject to a "living wage" ordinance). The forced farming mandate "crosse[s] the line distinguishing encouragement from coercion." *New York v. United States*, 505 U.S. 144, 166, 175 (1992).

citizen[.]" *Spann v. City of Dallas*, 111 Tex. 350, 356 (1921).

This Court presupposed the existence of a similar limit in *Yee*, 503 U.S. at 528, holding that restrictions on mobile home space rentals did not effect a taking, but reserving judgment for "[a] different case . . . were the statute, on its face or as applied, to compel a landowner over objection to rent his property or to refrain in perpetuity from terminating a tenancy." That hypothetical case, in which a landowner is stripped of the right to choose whether to engage in a particular business, mirrors this one. The California Court of Appeal once understood that mandated personal obligations masquerading as land use regulations exceeded the police power. "While [a state's] police power may limit and restrict the uses to which an owner may put his property, it may not compel him to use such property for a particular purpose if he prefers to abandon such a use thereof." *Department of Public Works v. City of San Diego*, 122 Cal. App. 159, 166-67 (1932). This Court applied this principle even to common carriers in *Brooks-Scanlon Co. v. Railroad Commission of Louisiana*, 251 U.S. 396, 399 (1920), holding that "[a] carrier cannot be compelled to carry on even a branch of business at a loss, much less the whole business of carriage." Private landowners who have never held themselves out as commercial agricultural operators should stand on even stronger ground than regulated common carriers.

B. History and Tradition Suggest That Compelled Occupation Falls Outside the Legitimate Scope of Governmental Power

Throughout American history, questions regarding whether and when the government may impinge on a person's liberty interest in pursuing the occupation of his choice arose in the context of regulation barring or restricting entry to a profession. *See, e.g.*, *Smith v. Texas*, 233 U.S. 630, 636 (1914) ("Liberty means more than freedom from servitude, and the constitutional guaranty is an assurance that the citizen shall be protected in the right to use his powers of mind and body in any lawful calling."); *Adams v. City of Harahan*, 95 F.4th 908, 913-15 (5th Cir. 2024) (discussing cases); *Birkenfield v. United States*, 369 F.2d 491, 493 (3d Cir. 1966) ("It is abundantly clear that the government may not arbitrarily deny an individual the opportunity to engage in a chosen private profession."); *Robinson v. Diamond Housing Corp.*, 463 F.2d 853, 867 (D.C. Cir. 1972) ("There would be severe constitutional problems with a rule of law which required an entrepreneur to remain in business against his will.").

State decisions reflect both the importance of the liberty interest in occupational choice as well as the underlying policies that favor individual assessment of one's own talents and skills in choosing a livelihood. For example, *Ross v. Sadgbeer* explained that "the law will not permit" a "contract to deprive a man of his livelihood, and the public of a useful member, without any benefit to the plaintiff." 21 Wend. 166, 167 (N.Y. Sup. Ct. 1839). And *Lufkin Rule Co. v. Fringeli*, 57 Ohio St. 596, 603 (1898), explained that the presumption that general restraints on trade are

illegal "arises from the fact that any restraint of the kind tends to oppression, by depriving the individual of the right to engage in a pursuit or trade with which he is generally most familiar, and consequently the community of the services of a skillful laborer."

The New York Supreme Court's decision in *Overbagh v. Patrie*, 8 Barb. 28 (N.Y. Gen. Term 1850), illustrates how deeply this principle runs in American law. *Overbagh* voided a lease condition—far less intrusive than the Marin covenant—that required payment of a fraction of purchase money on any alienation of inherited farmland. The court condemned such conditions as against public policy:

> Such conditions have the effect of preventing a change of occupation. They require the son to live upon and cultivate the same farm his father has tilled, though he may be unfitted for the employment, and may have been designed by nature for some other calling better adapted to his taste and capabilities. He is denied the opportunity to go abroad into the world to reap the rewards of his enterprise and industry, except at the sacrifice of a large share of the estate made valuable by the toil and industry of his fathers. In a land where the professions and trades are open to all, he is subjected to all the discouragements of caste.

Id. at 44.

While the historical use of the police power is broad, it is not unlimited. *Calder v. Bull*, 3 U.S. (3 Dall.) 386, 388-89 (1798), identified the inherent limits of legislative power: a legislature "may command what is right, and prohibit what is wrong; but they cannot . . . violate the right of an antecedent

lawful private contract; or the right of private property." A mandate compelling a private citizen to operate a commercial enterprise on their private property in perpetuity does not "command what is right." It effectively commandeers both the person *and* the property: "Mankind are greater gainers by suffering each other to live as seems good to themselves, than by compelling each to live as seems good to the rest." *Christensen v. State*, 266 Ga. 474, 481 (1996) (Sears, J., dissenting) (quoting John Stuart Mill, *On Liberty* 28-29 (1859)). Marin County's restrictive covenant is the antithesis of that constitutional principle, exceeding even the condition condemned in *Overbagh*. Rather than merely penalizing alienation, it affirmatively mandates perpetual commercial farming. If a nineteenth-century court recognized that conditions preventing "a change of occupation" were void as against public policy, a mandate affirmatively imposing a specific occupation finds no support anywhere in this Nation's legal tradition. The complete absence of historical precedent for this form of regulation confirms that it falls outside the traditional scope of the police power. *Washington v. Glucksberg*, 521 U.S. 702, 720-21 (1997).

The most troubling feature of the ruling below is its complete absence of any principled limit on governmental power. The court held that the covenant requirement was a valid land-use regulation because it bore a sufficient connection to the County's general interest in agricultural preservation. But if any commercial mandate tied to any articulated governmental policy interest is subject to and survives rational basis review, then local governments have effectively unlimited power to conscript landowners

into any occupation they deem beneficial. Such conscription is inherently constitutionally suspect. *See, e.g.*, *Colbert v. Rickmon*, 747 F. Supp. 518, 525-28 (W.D. Ark. 1990) (holding unconstitutional a requirement that attorneys represent indigent clients without pay).

C. The Lease Alternative Does Not Cure the Constitutional Violation—It Compounds It

The Court of Appeal suggested that the Benedettis may satisfy the covenant by leasing their land to a commercial agricultural producer rather than farming it personally. App. 26a-27a. This does not cure the constitutional problem; it deepens it. A landowner who is required—on pain of losing the ability to build his home—to enter into a commercial lease with an agricultural producer is not free from commercial agriculture. Entering such a lease **is** participation in commercial agriculture, just by a different modality. The government has not offered an escape from the mandate; it has offered a choice between two forms of compelled commercial involvement in farming.

The requirement also effects a physical invasion of the Benedettis' property by requiring them to allow a third-party commercial agricultural operator the right to occupy and work on their private property. This is a *per se* physical taking, categorically distinct from regulatory burdens on land use. *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 149-50 (2021) (government-compelled access to private property constitutes a per se physical taking requiring just compensation).

The lease option also exposes the Benedettis to significant and ongoing legal liability that they, as

plumbers with no farming expertise, are wholly unequipped to manage. Under California law, a commercial landowner "cannot totally abrogate its landowner responsibilities merely by signing a lease." *Lopez v. Superior Court*, 45 Cal. App. 4th 705, 715 (1996) (citation omitted). At the time a lease is executed and upon renewal, the landlord must inspect the premises and make them reasonably safe from dangerous conditions—even if the lease purports to assign that obligation to the tenant. *Ibid.* "Those who own or occupy property have a duty to maintain their premises in a reasonably safe condition." *Staats*, 25 Cal. App. 5th at 833 (footnote omitted); *see also Kinsman v. Unocal Corp.*, 37 Cal. 4th 659, 674 (2005) (landowner must inspect or take other proper means to ascertain the condition of the premises). *Peterson v. Superior Court*, 10 Cal. 4th 1185, 1189 (1995), confirms that landlords who breach the applicable standard of care "may be held liable under general tort principles for injuries resulting from defects in their premises." Commercial farming operations involve sophisticated and dangerous machinery and agricultural chemicals; a farming operation may itself constitute hazardous employment,[11] and the Benedettis could be held liable for injuries sustained by a lessee's employees, contractors, or even third parties. *See Castellano v. Wal-Mart Stores, Inc.*, 373 F.3d 817, 822 (7th Cir. 2004) (lessor liable for casualty damage to lessee's property); *Peterson*, 10 Cal. 4th at 1189 (While strict liability does not apply, this "by no means absolves hotel proprietors or landlords of all

[11] *Davis v. Grain Dealers Mut. Ins. Co.*, 128 So. 2d 27, 29 (La. Ct. App. 1961) (farming operation is "hazardous" when using motorized vehicles).

potential responsibility for such injuries; on the contrary, hotel proprietors and landlords that breach the applicable standard of care still may be held liable under general tort principles for injuries resulting from defects in their premises."). Leases are also subject to breach, disputed interpretation, and litigation—all of which the Benedettis would be required to navigate as the legally responsible landowners of an active agricultural operation they did not choose and do not want.

Modern farming involves sophisticated and dangerous machinery and chemicals. Someone forced to farm or to be responsible for a tenant farmer must have sufficient knowledge and motivation to maintain a safe and productive working environment. The Benedettis are plumbers. They lack the skills and interest in either farming the land themselves or overseeing a tenant farmer. The Benedettis face a binary choice: be conscripted into commercial farming personally, or be conscripted into a perpetual commercial lease for physical invasion of their property and ongoing legal liability for a hazardous enterprise they have no ability or desire to oversee. Either path demands the surrender of constitutional rights as the price of a building permit. A government that offers only a choice between two constitutional violations has not offered a constitutional alternative. The unconstitutional conditions doctrine forbids exactly that. *See Perry v. Sindermann*, 408 U.S. 593, 597 (1972) (government "may not deny a benefit to a person on a basis that infringes his constitutionally protected interests").

If Marin County can require plumbers who inherit farmland to become commercial farmers as the price

of a building permit, nothing in the court's analysis would prevent a municipality from conditioning residential building permits on commitments to operate other favored businesses, provide community services, or engage in any other commercial activity government might deem beneficial to the surrounding area. The police power has never extended so far, and this Court should say so.

II. Marin County's "Land Use" Regulation Requiring Owners to Accept the Government's Choice of Occupation Impinges on a Fundamental Right

A. Occupational Liberty Is a Fundamental Constitutional Right with Deep Roots in History and Tradition

In *Meyer v. Nebraska*, 262 U.S. at 399, this Court held that the liberty protected by the Fourteenth Amendment

> denotes not merely freedom from bodily restraint but also the right of the individual to contract, to engage in any of the common occupations of life, to acquire useful knowledge, to marry, establish a home and bring up children, to worship God according to the dictates of his own conscience, and generally to enjoy those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men.

The enumeration is telling. Occupational liberty—the right to engage in the common occupations of life—stands alongside marriage, worship, and family in this Court's account of constitutionally protected liberty. It is not listed as a mere economic preference

subordinate to the police power; it is a fundamental privilege of free persons long recognized at common law. According to James Madison, property included those "personal attributes that deserved private autonomy from government action, such as opinions, religious values and practices, and choice of occupation." Wayne McCormack, *Lochner, Liberty, Property, and Human Rights*, 1 N.Y.U. J. L. & Liberty 432, 454 (2005) (citing James Madison, *Essay on Property*, *in* 4 *Letters & Other Writings of James Madison* 478 (1884)).

Two years later in *Pierce v. Society of Sisters*, 268 U.S. 510, 534-35 (1925), the Court reaffirmed that the Fourteenth Amendment protects "the liberty of parents and guardians to direct the upbringing and education of children under their control," and that the state may not "standardize its children by forcing them to accept instruction from public teachers only." The decision "articulated an inherent limit of government in a liberal society. In trying to enforce such standardization, the State of Oregon had not been exercising 'any proper power.'" Steven D. Smith, Meyer*,* Pierce*, and the Formation of Persons*, 26 J. Contemp. Legal Issues 55, 70 (2025) (citing *Pierce*, 268 U.S. at 536). The underlying principle and fundamental liberty interest that government may not compel individuals to pursue the state's chosen path of life and vocation cannot be reconciled with Marin County's mandate that landowners pursue commercial agriculture, or contract with others to do so.

The historical roots of occupational liberty run deep in both federal and state constitutional jurisprudence.

In *Truax*, 239 U.S. at 41, this Court recognized that "the right to work for a living in the common occupations of the community is of the very essence of the personal freedom and opportunity that it was the purpose of the [Fourteenth] Amendment to secure." State courts construing the same constitutional tradition reached the same understanding. The Michigan Supreme Court emphasized the connection between work and personal autonomy. *See People ex rel. Kuhn v. Common Council of Detroit,* 70 Mich. 534, 537 (1888) ("Liberty . . . means . . . to pursue such callings and avocations as may be most suitable to develop [a person's] capacities, and to give them their highest enjoyment."); *Commonwealth v. Strauss*, 191 Mass. 545, 550 (1906) (The Fourteenth Amendment protects "the right of every person to his life, liberty and property, including freedom to use his faculties in all lawful ways, 'to live and work where he will, to earn his livelihood by any lawful calling, to pursue any livelihood or vocation[.]'"). When two tradesmen who shared both a surname and occupation sought judicial resolution of a dispute over which of them must stop using his name to identify his business, the court refused, holding that it is "wholly beyond the power of the court" to require someone "to change his name or his occupation." *Miller v. Miller*, 8 Ky. Op. 41, 41 (Ct. App. 1874). These authorities reflect a consistent understanding across jurisdictions and eras: occupational liberty is among the most fundamental aspects of personal freedom that the law protects. This was true from the time of the Founding and especially so after passage of the Fourteenth Amendment. *Conn v. Gabbert*, 526 U.S. 286, 291-92 (1999) ("the liberty component of the Fourteenth Amendment's Due Process Clause includes some generalized due process

right to choose one's field of private employment"); *Tiwari v. Friedlander*, 26 F.4th 355, 360-61 (6th Cir. 2022) (The Fourteenth Amendment reaches "laws that impose substantive restrictions on individual liberty, including the right to engage in a chosen occupation.").

Applying these principles to regulations that are the inverse of this case—laws that unduly *restrict* the ability of an individual to lawfully engage in their chosen profession, courts are highly skeptical and carefully scrutinize infringements on occupational freedom. *See, e.g.*, *Ultra Lube, Inc. v. Dave Peterson Monticello Ford-Mercury, Inc.*, No. C8-02-658, 2002 WL 31302981, at *6 (Minn. Ct. App. Oct. 15, 2002) (rejecting a non-compete clause because it was an "oppressive restraint upon the employee's opportunities to work and earn a living"). Indeed, in California, covenants not to compete are highly disfavored, and subject only to very limited exceptions. *Edwards v. Arthur Andersen LLP*, 44 Cal. 4th 937, 945 (2008) (noting that "California settled public policy in favor of open competition" making covenants not to compete void, subject only to a few exceptions). One court even called covenants not to compete, which discourage employees from terminating their employment, a form of "industrial peonage" because of the coercive relationship between a large employer and its employees. *Josten's, Inc. v. Cuquet*, 383 F. Supp. 295, 299 (E.D. Mo. 1974). Here, the County used *far greater* coercive power to obtain a similar result: once imposed, the Benedettis—and any future owners of the property, whether their own children or third-party purchasers—will be incapable of leaving the government-imposed occupation.

The connection between occupational liberty and bodily autonomy is direct and important. One's choice of occupation determines how one uses one's brain, one's hands, one's muscle—the daily direction of the physical self. *See Union Pac. Ry. Co. v. Botsford*, 141 U.S. 250, 251 (1891) ("No right is held more sacred, or is more carefully guarded by the common law, than the right of every individual to the possession and control of his own person, free from all restraint or interference of others, unless by clear and unquestionable authority of law."). Whether to install a sink or to plant seeds is a choice about how one deploys one's own faculties, labor, and time. That is why *Kuhn* identified occupational choice as the means by which a person develops capacities and achieves their "highest enjoyment," and why *Strauss* framed the right as "freedom to use his faculties in all lawful ways." Just as government cannot commandeer the body directly, it cannot commandeer it indirectly by dictating the occupation in which it must labor. Commandeering "connote[s] more than the mere adjustment of activity already voluntarily entered into;" it "also involve[s] control over and compulsion of not just the activity in question, but also of the person or entity involved itself." John T. Valauri, *Federalism, Mandates and Individual Liberty*, 43 N. Ky. L. Rev. 175, 213 (2016); *id.* at 208 (distinguishing regulation of existing activity with commandeering, "a far greater interference with individual will and freedom than simple regulation").

The Due Process Clause "specially protects those fundamental rights and liberties which are, objectively, 'deeply rooted in this Nation's history and tradition,' and 'implicit in the concept of ordered liberty,' such that 'neither liberty nor justice would

exist if they were sacrificed.'" *Glucksberg*, 521 U.S. at 720-21 (citations omitted). Occupational liberty satisfies both prongs of that test. The right to pursue the callings of one's choosing—and the correlative right not to be compelled into callings not of one's choosing—is confirmed in the text of the Fourteenth Amendment as construed in *Meyer* and *Pierce*, recognized in common law going back centuries, reflected in the Thirteenth Amendment's prohibition on involuntary servitude, treated as "of the very essence of personal freedom" in *Truax*, and documented in the consistent understanding of courts from Kentucky to Michigan to Massachusetts. It is difficult to identify a liberty more deeply rooted in the Nation's history and tradition.

The right to engage in the common occupations of life is a bilateral freedom. It encompasses the affirmative right to enter a chosen occupation and the negative right to decline an occupation not of one's choosing. If government cannot exclude a citizen from her chosen occupation without constitutional scrutiny, it equally cannot conscript her into a different one without equivalent scrutiny. These are mirror-image violations of the same fundamental right.

The corollary right has ancient roots. In *Overbagh*, the court held that a private contractual condition with the practical effect of "preventing a change of occupation" and requiring the son to cultivate the same farm as his father, "though he may be unfitted for the employment, and may have been designed by nature for some other calling" was void as a violation of public policy. 8 Barb. at *44. If private parties may not impose such restrictions without violating public policy, a government of limited powers surely may not impose them directly. The corollary right is implicit

in every statement of the affirmative right: a right to choose one's occupation that could be overridden by a government mandate imposing a different occupation would be no right at all.

The Benedettis have not voluntarily entered commercial agriculture. But the Benedettis now face three equally unconstitutional choices: become commercial farmers against their will, forego their lawful right to develop their private property, or sell their inherited land.

B. The Mandated Covenant Fails Under Any Standard of Review

When government action directly targets a fundamental liberty interest—as the Marin covenant directly targets the right to occupational liberty—heightened scrutiny is appropriate. *Glucksberg*, 521 U.S. at 721. The court below applied rational basis, deferring to any conceivable legislative purpose. That was error. Rational basis is appropriate when government incidentally burdens economic activity through general social regulation. It is not appropriate when government directly and intentionally overrides a fundamental constitutional right. *See Chisholm v. Georgia*, 2 U.S. (2 Dall.) 419, 468 (1793) ("The rights of individuals and the justice due to them, are as dear and precious as those of the States. Indeed, the latter are founded upon the former; and the great end and object of them must be to secure and support the rights of individuals, or else vain is Government.").

The County already achieves agricultural land-use preservation through existing C-APZ zoning, which restricts the land to agricultural and supporting uses, including a home for the landowner. App. 4a-5a. The

covenant adds nothing as a land-use measure; it is non-redundant only as a personal mandate on the human beings who hold title, now and in perpetuity.

Even under the rational basis standard the Court of Appeal applied, the covenant cannot stand. The covenant's purpose, as the Court of Appeal acknowledged, "is not mitigating the general impacts of residential development." App. 20a. A condition that addresses no harm caused by the proposed development bears no rational relationship to any legitimate land-use interest in the constitutional sense. *See Fassett v. City of Brookfield*, 402 Wis.2d 265, 280 (Ct. App. 2022) (building permit condition was invalid where there was "no evidence that the proposed development would increase congestion, decrease safety, or hinder the adequate provision of transportation."); 2 Rathkopf's The Law of Zoning and Planning § 28:27 (4th ed. 1995) (owners may not be singled out as simply convenient targets of opportunity for dealing with community problems). The Benedettis' proposed home does not threaten the agricultural character of surrounding land; the underlying C-APZ zoning already ensures that the Benedettis cannot subdivide their land for residential housing or other commercial uses. The covenant's only constitutionally cognizable effect is to conscript the landowner into a specific commercial enterprise—and that effect, whether analyzed under rational basis or strict scrutiny, exceeds what the Due Process Clause permits.

III. This Case Presents a Clean Vehicle for Resolving Questions of Nationwide Importance

This Court has consistently recognized the right to engage in the common occupations of life, *Meyer*, 262 U.S. at 399, and the generalized right to choose one's field of employment, *Conn*, 526 U.S. at 291-92, but has never addressed their necessary corollary—the right not to be conscripted into an occupation not of one's choosing. The Ninth Circuit has held that a substantive due process claim may arise when government arbitrarily prevents a person from pursuing a chosen occupation, *Engquist v. Oregon Dep't of Agric.*, 478 F.3d 985, 997 (9th Cir. 2007), but no court of appeals has addressed whether the same protection extends to affirmative compulsion into an occupation not of one's choosing. The Court should grant review to resolve this unsettled question.

The police power question is equally unsettled. No court at any level has ever upheld a zoning ordinance mandating a specific commercial occupation for land-owners as a condition of residential development. The complete absence of historical precedent for this form of regulation, combined with the long tradition of decisions recognizing the limits of the police power in compelling commercial activity, makes clear that the Court of Appeal's holding departs from settled constitutional principles. This Court should restore the traditional limits.

Agricultural preservation is a policy priority in jurisdictions across the country, which often rely on property owners' *voluntary* adoption of conservation

easements or sale to a land trust.[12] If the decision below stands, other jurisdictions will have a template for shifting from the constitutional option of voluntary programs to incentivize farmland conservation into an unconstitutional perpetual personal mandate on landowners. The principle is also generalizable well beyond agriculture: any local government could leverage its permitting authority to extract any commercial commitment from any landowner, conditioned on any policy goal, so long as the commitment bore some generalized relationship to any articulated governmental interest.

The Benedettis cannot build a home on their inherited land without either consenting to perpetual commercial farming—something they have no desire or ability to undertake—or selling the land their father worked to provide for them. The constitutional wrong is ongoing and concrete. The perpetual nature of the Marin covenant makes the precedential risk acute. As Professor Mahoney documented, perpetual land restrictions that cannot adapt to changed economic circumstances impose significant social costs precisely because they are irreversible. *See* Julia D. Mahoney, *Perpetual Restrictions on Land and the*

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[12] *See, e.g.*, Tennessee Dep't of Agric., *Farmland Preservation Program*, https://tinyurl.com/c4aaknnc (visited Apr. 23, 2026) (grant program to incentivize farmland and forestland owners to voluntarily enroll their land in a permanent conservation easement); U.S. Dep't of Agric., *Land Conservation*, https://tinyurl.com/3sj8ra45 (visited Apr. 23, 2026) (voluntary, incentive-based conservation to landowners); *see also* U.S. Dep't of Agric., *Agricultural Conservation Easement Program*, https://tinyurl.com/bdhssucj (visited Apr. 23, 2026) (helping "landowners, land trusts, and other entities protect, restore, and enhance wetlands or protect working farms and ranches through conservation easements").

Problem of the Future, 88 Va. L. Rev. 739 (2002). Once recorded, the Marin covenant binds not only the Benedettis but every future owner of the property, forever. Constitutional errors embedded in perpetual deed restrictions have consequences that compound over time. The Court's intervention now prevents those consequences from spreading through both Marin County and the broader body of land-use law.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

JOHANNA B. TALCOTT
Pacific Legal Foundation
4440 PGA Blvd., Suite 307
Palm Beach Gardens, FL
33410

DEBORAH J. LA FETRA
Pacific Legal Foundation
3100 Clarendon Blvd.,
Suite 1000
Arlington, VA 22201

JEREMY TALCOTT
Counsel of Record
Pacific Legal Foundation
555 Capitol Mall,
Suite 1290
Sacramento, CA 95814
(916) 419-7111
jtalcott@pacificlegal.org

Counsel for Petitioners

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