No. 21-563

IN THE

Supreme Court of the United States

WARREN M. LENT, ET AL.,
Petitioners,

v.

CALIFORNIA COASTAL COMMISSION, ET AL.,
Respondents.

On Petition for Writ of Certiorari to the California Court of Appeal, Second Appellate District

BRIEF OF THE CATO INSTITUTE AND MOUNTAIN STATES LEGAL FOUNDATION AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

1. Whether the California Coastal Commission violated the Fourteenth Amendment's Due Process Clause when it held an administrative hearing without several expected procedural safeguards.

2. Whether the California Coastal Commission violated the Eighth Amendment's Excessive Fines Clause when it imposed a multi-million-dollar fine for a minor alleged infraction.

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INTEREST OF *AMICI CURIAE*[1]

The Cato Institute was established in 1977 as a nonpartisan public policy foundation dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Robert A. Levy Center for Constitutional Studies was established to restore the principles of limited constitutional government that are the foundation of liberty. Towards those ends, Cato publishes books and studies, conducts conferences and forums, and produces the annual *Cato Supreme Court Review*.

The Mountain States Legal Foundation is a nonprofit, public-interest law firm dedicated to bringing before the courts issues vital to the defense and preservation of individual liberties, the right to own and use property, the free enterprise system, and limited and ethical government. Since its creation in 1977, MSLF attorneys have been active in litigation regarding the proper interpretation and application of statutory, regulatory, and constitutional provisions.

This case interests *amici* because the California Coastal Commission's actions implicate fundamental constitutional protections for individual rights under the Eighth Amendment's Excessive Fines Clause and the Fourteenth Amendment's Due Process Clause.

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[1] Rule 37 statement: All parties were timely notified and consented to the filing of this brief. No part of this brief was authored by any party's counsel, and no person or entity other than *amici* funded its preparation or submission.

INTRODUCTION AND SUMMARY OF ARGUMENT

Warren and Henny Lent own a home along the sun-drenched coast of Malibu, California. Like most beachfront homeowners in the Golden State, the Lents are subject to the oft-draconian rules and rulings of the California Coastal Commission (CCC). In their case, the CCC has (again) gone too far.

After an administrative hearing in which the Lents had neither the rights to subpoena, to cross-examine witnesses, to exclude hearsay, or to demand witness testimony be given under oath, the CCC imposed an $11,250 per-day retroactive fine—a shocking $4.185 million in total. And for what? In California, most beachfront is open to the public. To facilitate use, the CCC has secured public-access easements across thousands of private parcels.

As the CCC tells it, the Lents over several years rejected or stonewalled multiple requests to remove a gate and stairway impeding public beach access. The Lents continue to rebut the charges, claiming, *inter alia*, that these structures, which were on the property when they purchased it, do not block access because at the end of the pathway there is a high drop above a county-owned drainage tunnel—hardly a suitable means of ingress to the beach.

We cannot know whether the CCC's version of events is true because it was established at a hearing that lacked even the most rudimentary procedural safeguards—ones that Americans have come to expect in almost all cases, whether criminal, civil, or even administrative. These missing safeguards included several that this Court holds are intrinsic to

the Fourteenth Amendment's Due Process Clause. Hearings conducted under the California Coastal Act are not exempt from that clause's requirements.

Even if the Lents had been afforded a by-the-books hearing, the multi-million-dollar fine the CCC imposed violates the Eighth Amendment's protection against excessive fines—a protection that, like those enshrined in the Due Process Clause, hearkens back *at least* to Magna Carta. The California Court of Appeal's opinion in favor of the CCC—the state high court denied the Lents' petition for review—perpetuates the agency's decades-long campaign against unlucky homeowners' due process rights and excessive-fine protections. *Amici* urge the Court to reverse and remand to correct the CCC's unconstitutional behavior, and to prevent other agencies from doing the same.

ARGUMENT

I. THE COURT BELOW MISINTERPRETED *MATHEWS V. ELRIDGE*

In *Mathews v. Eldridge*, this Court held, *inter alia*, that due process, even in the quasi-judicial context, "requires consideration of . . . the private interest that will be affected by the official action." 424 U.S. 319, 335 (1976). Yet the court below reasoned that the CCC meets this requirement—or the requirement at least becomes irrelevant—when the adjudicator has the *option* of imposing a de minimis fine, irrespective of the actual fine levied, especially when that fine is far and above what is reasonable. *Lent v. Cal. Coastal Comm'n*, 62 Cal. App. 5th 812, 844 (Apr. 5, 2021) (requiring the Lents to demonstrate that the CCC

imposes unconstitutional fines "in the generality or the great majority of cases").

By this logic, the CCC can impose fines up to the statutory maximum of $20 million, confident that it will avoid *Mathews* scrutiny just by giving a pre-hearing stipulation to the defendant that the fine could be as little as one dollar. As the court below put it, "[w]hile the Commission certainly has the potential to impose significant penalties, this potential has less relevance to the Lents' facial challenge because [S]ection 30821 does not require the commission to impose a minimum penalty." *Id.*

That reasoning departs from this Court's procedural due process doctrine. "The extent to which procedural due process must be afforded the recipient [of Social Security income] is influenced by the extent to which he may be condemned to suffer grievous loss." *Goldberg v. Kelly*, 397 U.S. 254, 263 (1970) (cleaned up). In *Mathews*, the Court wrote that "the degree of potential deprivation that may be created by a particular decision is a factor to be considered in assessing the validity of any administrative decisionmaking process." 424 U.S. at 341 (internal citation omitted).

The Lents have always acted in good faith, "ma[king] clear that they were prepared to remove any structures that proved to be inconsistent with a feasible plan to develop the easement," and even "provid[ing] a gate-key to the California Coastal Conservancy, the then-holder of the easement, to facilitate the accessway's development." Pet. Br. at 9. None of the CCC's procedural corner-cutting was in response to the Lents' conduct; it appears rather to

have been part of an ulterior effort to turn the screws on them. These deprivations include "giv[ing] no notice of those who may testify at the hearing," "no right to cross-examine witnesses, no power to demand testimony under oath or to exclude hearsay or other unreliable testimony." *Id.* at 11–12.

All things considered, *Mathews* does not place onerous demands on government. Given its cost-benefit approach to procedural due process rights, and the host of fairly malleable qualifications it places on the exercise of those rights, *Mathews* delineates a floor rather than a ceiling. The Court's *real* task in *Mathews* was to discern *how* certain longstanding notions of fairness, ingrained in Anglo-American law for centuries, were to be applied in its discrete fact-set—viz., a hearing on the continuation or cessation of disability benefits. The longstanding legal principles themselves were never in question. Principles like the "right to an 'evidentiary hearing'"—a basic right to bring evidence in one's favor (a no-brainer)—should not require this Court's clarifying endorsement. *Mathews*, 424 U.S. at 325 (citing *Goldberg*, 397 U.S. at 254). Those rights the CCC chose to deny the Lents are all well-tested rudiments of the American legal process. Nothing about the facts here suggest any justification for depriving the Lents of such basic constitutional protections.

II. THE COURT BELOW MISUNDERSTANDS EXCESSIVE-FINES CASELAW, INCLUDING THIS COURT'S RULING IN *UNITED STATES V. BAJAKAJIAN*

A. The Historical Treatment of the Excessive Fines Clause Was as a Safeguard Against the Precise Sort of Governmental Action Taken Here

The historical treatment of the Eight Amendment's Excessive Fines Clause also cuts in the Lents' favor. In *Timbs v. Indiana*, which for the first time applied the clause against state-level action, this Court surveyed the clause's "venerable lineage" from Magna Carta to the Bill of Rights. The Court noted "the protection against excessive fines has been a constant shield throughout Anglo-American history." 139 S. Ct. 682, 689 (2019). Without it, the Court reasoned, such fines could "undermine other constitutional liberties," including chilling speech. *Id.*

Early American jurists believed that the Framers, though themselves largely silent on the specific meaning of "excessive fines," intended the clause to be rigorous. In 1819, the Kentucky Court of Appeals held that while "no definite criterion is furnished by the constitution or bill of rights by which to ascertain what fine would or would not be excessive . . . the fine imposed should bear a just proportion to the offense committed," a formulation that should bear in mind "the situation, circumstances and character of the offender": his ability to pay and need to maintain a livelihood. *Commonwealth v. Morrison*, 9 Ky. (2 A.K. Marsh.) 75, 99 (1819) (as cited in Nicholas M. McLean, *Livelihood, Ability to Pay, and the Original*

Meaning of the Excessive Fines Clause, 40 Hastings Const. L.Q. 833, 871 (2013)).

Add to this Webster's contemporary definition of "excessive" in his first volume: (a) "[b]eyond any given degree, measure or limit, or beyond the common measure or proportion . . ."; and (b) "[b]eyond the established laws of morality and religion, or beyond the bounds of justice, fitness, propriety, expedience or utility." 1 Noah Webster, *An American Dictionary of the English Language* (1828) (unpaginated). In the early republic, then, the commonly held definition of an "excessive" fine would have included imposing a dollar amount that did not secure retribution for victims (justice), assist in judicial economy (expedience), nor serve a bona fide remedial purpose (utility)—a penalty for penalty's sake.

Nothing in the historical record suggests that an excessive fine loses its excessiveness, as either a moral or constitutional matter, simply because the levier of the fine has the discretion to moderate it. If in the end the government agent imposes a penalty for the penalty's sake, or, worse still, to fatten its own wallet—as the CCC seems to be doing here—the Excessive Fines Clause should prohibit it.

B. The Fine Levied Against the Lents Is "Grossly Disproportional to the Gravity" of Their "Offense"

Since *United States v. Bajakajian*, 524 U.S. 321 (1998), the Excessive Fines Clause is no longer "a dead letter." McLean, *supra*, at 833 n.2 (quoting Edward Samuel Corwin et al., *The Constitution and What it Means Today* 432 (1978)). In *Bajakajian*, this Court ruled an asset forfeiture excessive, concluding

that "the text and history of the Excessive Fines Clause demonstrate the centrality of proportionality to the excessiveness inquiry," and citing Webster's and Samuel Johnson's definitions for support. 524 U.S. at 335 (cleaned up). *Bajakajian* is important not only because it was the first time this Court found an economic penalty to be excessive, but because it rejected the false distinction between criminal and civil confiscations, focusing instead on whether the seizure is punitive. *Id.* at 334 ("[A] punitive forfeiture violates the Excessive Fines Clause if it is grossly disproportional to the gravity of a defendant's offense."). The meaning of "excessive" changes depending on whether the purpose is to punish or to remedy—to balance costs and benefits among individuals and between individuals and the state.

Here, the court below held that the Lents' fine was remedial, reasoning that their reluctance to clearing the accessway without first asserting their rights "delayed the public's ability to use the easement to access the beach" along a three-mile stretch, and that "[t]here is no question the state places a significant value on the public's right to access the beach." *Lent*, 62 Cal. App. at 858. The court reached this conclusion despite several commissioners' determining, wrongly, that the Lents' conduct was "particularly egregious and warranted a penalty higher than the [CCC] staff's recommendation." *Id.* at 830. And even if the hard task of determining the exact dollar-value of the harm caused "does not show the penalty is not proportional to the Lents' violation," *id.* at 859, a fine that is millions more than what is recommended before a hearing is strong indication of disproportionality. The court's odd invocation of *Ojavan Investors v. Cal.*

Coastal Comm'n, 54 Cal. App. 4th 373 (1997) ["*Ojavan II*"], does not in fact support that reasoning. There, a $9.5 million fine was levied years before the California legislature enacted Section 30821. The fine was high in part because of the defendant's poor behavior: a developer ignored the terms of a permit prohibiting division of a 54-lot parcel and "attempt[ed] to resell them as individual lots." *Lent*, 62 Cal. App. at 859 (citing *Ojavan II*, 54 Cal. App. 4th at 378).

The CCC provided no evidence as to how such a large fine serves to remedy the Lents' alleged failure to provide beach "access." Although such costs are sometimes difficult to calculate, the millions in fines assessed here are not even in the reasonable ballpark. This Court can assuredly conclude that the fine is punitive, and thus "grossly disproportional to the gravity" of the "offense." *Bajakajian*, 524 U.S. at 334.

To all this the CCC might respond—though it has thus far only intimated—that the fine imposed is necessary to effectuate its statutory mission, deterring other would-be violators. Of course, the CCC's interactions with the Lents militate against its practical ability to turn excessive fines into a deterrent force. And at least one study from the Commission's first decade catalogued how CCC regulations served not as a deterrent force so much as a wealth-transfer vehicle disguised as good government. *See* H.E. Frech III & Ronald N. Lafferty, *The Effect of the California Coastal Commission on Housing Prices*, 16 J. Urb. Econ. 105 (1984).

This is not to say that the CCC cannot be a force for good, nor that its purpose is wholly unjustified.

States play crucial roles in coordinating collective efforts to preserve and protect natural resources within their borders, to maintain ecological integrity, and to ensure that recreational areas remain accessible and usable to the public. The fines levied against the Lents have nothing to do with *any* of these purposes, however.

Specifically, as *amici* and petitioners have well documented, even if the Lents had removed all obstructions on the same day they first had notice of the alleged violation, *nobody* could have used the disputed path to access the beach without significant risk of injury at the point where the pathway becomes a steep drop above a county-owned drainage tunnel. The only message the fine sends to the Lents' fellow Californians is that it is better to eat some upfront costs than to bother fighting with a state agency that, since 2014, has unilateral power to draw, adjudicate, and conclude its own claims against private parties without *any* outside oversight. This is the sort of official behavior from which the Excessive Fines Clause is designed to protect against.

III. FAILURE TO PROTECT PETITIONERS FROM FLAWED PROCESS AND AN EXCESSIVE FINE WILL GIVE THE CALIFORNIA COASTAL COMMISSION INCENTIVE TO CONTINUE LEVYING "GROSSLY DISPROPORTIONAL" FINES WITHOUT DUE PROCESS

If the Court declines to hear this case, the California court's erroneous readings of due process and excessive-fines jurisprudence will redound to countless future hearings in which the CCC and

similarly situated agencies in other states can (and, given the CCC's track record, likely will) impose enormous penalties. Nothing but this Court's attention will prevent the CCC from doing to countless other Californians what it is trying to do to the Lents. The need for the Excessive Fines Clause's protection is at its greatest when an agency has the power to impose fines that will line its own pockets without the approval of a disinterested adjudicator. Section 38201 permits the CCC to do exactly that. The CCC's history reveals a tendency to push fines and other penalties against accused offenders to the absolute allowable limit, regardless of the true gravity of the offense. *See generally* J. David Breemer, *What Property Rights: The California Coastal Commission's History of Abusing Land Rights and Some Thoughts on the Underlying Causes*, 22 UCLA J. Envtl. L. & Pol'y 247 (2004).

This case offers the Court an opportunity to draw a figurative line in the littoral sand, preventing the CCC from extracting more from defendants than their ostensible violations warrant. In doing so, it will send a crucial message to federal, state, and local officials everywhere that hearings in which millions of dollars are at stake, especially hearings as unfair as the CCC's, clearly demand (1) affording defendants the most robust set of procedural due process rights practicable under the circumstances, and (2) that courts hearing appeals subject any fines levied to an exacting review of the levying body's adherence to the Excessive Fines Clause.

CONCLUSION

For the reasons stated above, and for those set forth by petitioners, the Court should grant review and reverse the court below.

Respectfully submitted,

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