ORIGINAL

In the
Supreme Court of Ohio

SUNSET ESTATE PROPERTIES, LLC, et al.,	:	Case No. 2013-1856
Plaintiffs-Appellees,	:	On Appeal from the Ninth District Court of Appeals, Medina County Ohio
v.	:	
VILLAGE OF LODI, OHIO,	:	
Defendant-Appellant.	:	Court of Appeals Case No. 12CA0023-M

MERIT BRIEF OF *AMICUS CURIAE* STATE OF OHIO IN SUPPORT OF NEITHER PARTY

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FILED
MAY 27 2014
CLERK OF COURT
SUPREME COURT OF OHIO

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INTRODUCTION

A court should not decide constitutional questions unless necessary. And a court should not declare a law unconstitutional when there are several other grounds to resolve the case. But that is what the Ninth District did here. This Court should therefore vacate the judgment below and remand for further proceedings.

Plaintiffs, owners of mobile-home parks in the Village of Lodi, Ohio, presented several statutory and constitutional reasons that a local zoning ordinance should not apply to them. After Lodi successfully defended its statute in the trial court, the Ninth District reversed. Its lone holding: the Lodi ordinance is facially unconstitutional as a violation of substantive due process. That was error because the Ninth District should have avoided the broad constitutional question if it had any other means of resolving the case. And it had at least two. It could have interpreted the statute as not reaching the challenged conduct (whether vacant individual pads for mobile homes are nonconforming uses). Or it could have concluded that a state zoning statute displaced the local ordinance. Either route would have avoided the nuclear option of striking a law facially on a rationale that invites inappropriate scrutiny of legislative acts and that forever prevents the municipality from passing similar laws in the future.

The State of Ohio joins this case as *amicus curiae* because the Ninth District's holding undermines principles of judicial restraint and elevates the scrutiny applied to legislation, including zoning ordinances. Unless reversed, the Ninth District's holding will encourage unnecessary constitutional pronouncements and upend the well-established framework for constitutional challenges to zoning ordinances. This Court should vacate and reaffirm the principle that courts should not decide cases on constitutional grounds unless necessary.

STATEMENT OF AMICUS INTEREST

The State of Ohio files this brief in support of neither party and expresses no opinion about the proper resolution of this case on remand. Even so, the State has a substantial interest in judicial restraint and in the application of settled principles for testing the constitutionality of statutes. The Ninth District's opinion undercuts both of those values. By reaching a constitutional question first, it invades the power of the General Assembly and other legislative authorities to adjust statutes after a court interprets them. Further the Ninth District's constitutional analysis shows the wisdom of avoiding those questions unless absolutely necessary. Rather than applying settled authorities for the review of zoning ordinances, the Ninth District used a grab bag of constitutional and quasi-constitutional concerns to justify its holding striking down the law. That analysis cannot stand as a model for other courts or litigants. The State of Ohio urges the Court to vacate the decision below and remand to the Ninth District Court of Appeals.

STATEMENT OF THE CASE AND FACTS

Sunset Estate Properties, LLC and Meadowview Village, Inc. own mobile-home parks in Village of Lodi, Ohio. *Sunset Estate Props., LLC v. Lodi*, 9th Dist. No. 12CA0023-M, 2013-Ohio-4973 ¶ 2 (hereafter "App. Op."). Both parks are located in an area of Lodi that is zoned as an R-2 Medium Density Residential District, which does not permit mobile-home parks. *Id.* The parks were established prior to the zoning designation and thus are considered nonconforming land uses. *Id.* The parks have been allowed to continue as nonconforming uses under Lodi's Local Zoning Code (L.Z.C.):

> Whenever a nonconforming use has been discontinued for a period of six months or more, such discontinuance shall be considered conclusive evidence of an intention to legally abandon the nonconforming use. At the end of the six-month period of abandonment, the nonconforming use shall not be re-established, and any further use shall be in conformity with the provisions of this Zoning Code. In the case of

> nonconforming mobile homes, their absence or removal from the lot shall constitute discontinuance from the time of absence or removal.

L.Z.C. 1280.05(a).

Both of the parks have several individual mobile-home lots that have been vacant for more than six months. App. Op. ¶ 2. When the park owners leased these empty lots to tenants, Lodi refused to connect utility service to those lots because the Village treated the lots as abandoned nonconforming uses pursuant to L.Z.C. 1280.05(a). *Id.*

The park owners filed a complaint in the Medina County Court of Common Pleas seeking three declarations, an injunction, and a writ of mandamus. The park owners sought declarations that the Village ordinance does not prohibit their continued rental of lots that had been vacant for six months or more, that the ordinance is unconstitutional, and that the ordinance constitutes an uncompensated taking of their property. First Amended Complaint, ¶¶ 12, 14, 17. They sought both an injunction and a writ of mandamus from the common pleas court, each of which would require the Village to institute appropriation proceedings. *Id.* ¶¶ 21, 25.

The common pleas court granted summary judgment in Lodi's favor on all counts. The court held that the ordinance "is not unconstitutional or in conflict with state law [and] that the local ordinance does not amount to a regulatory taking." App. Op. ¶ 6.

The park owners appealed to the Ninth District. That court reversed, holding that the Village ordinance is facially unconstitutional. *Id.* ¶ 28. The appeals court offered several rationales for that conclusion. For example, it considered whether the ordinance was a valid exercise of the Village's home-rule authority. *Id.* ¶ 15. It considered whether the ordinance constitutes a taking of the park owners' property. *Id.* ¶¶ 17, 26. And it considered whether the Village's actions were authorized by the ordinance. *Id.* ¶¶ 21-27. After touching on all of these

topics, the Ninth District declared the ordinance facially unconstitutional. *Id.* ¶ 28. Judge Carr wrote the opinion of the court, but Judges Moore and Belfance concurred in judgment only.

The Village of Lodi timely sought review in this Court.

ARGUMENT

***Amicus Curiae* State of Ohio's Proposition of Law:**

> *Under cardinal principles of judicial restraint, courts should avoid deciding far-reaching constitutional challenges to democratically passed laws when such decisions are not necessary to decide the case before them.*

The Ninth District faced at least four challenges to the Lodi ordinance: that it is facially unconstitutional, that it is in conflict with state law, that it does not apply to the park owners' properties in the way that the Village claims it does, and that it effects an uncompensated taking. The Ninth District erred by deciding the broadest constitutional question to strike the law down in all of its applications without first considering statutory arguments that could have avoided the constitutional question altogether. This Court should vacate and remand the case to the Ninth District to consider whether the zoning ordinance is in conflict with state law and whether it actually applies to prevent the park owners from renting out long-vacant mobile home lots as the Village asserts. Only if those analyses still result in applying the statute to the park owners should the appeals court consider the constitutional question. And if it does so, that analysis should focus on the narrow test for constitutional challenges to zoning ordinances.

A. The Ninth District should not have reached the question of whether the Lodi Ordinance is constitutional.

"It is a fundamental principle of law that constitutional questions will not be decided until the necessity for their decision arises." *State ex rel. Lieux v. Village of Westlake*, 154 Ohio St. 412, 415 (1951). And this Court will not "exercise its power to determine the constitutionality of a legislative enactment unless it is absolutely necessary to do so." *Greenhills Home Owners*

Corp. v. Village of Greenhills, 5 Ohio St. 2d 207, 212 (1966). "Even when one of the parties has raised a constitutional issue," this Court will not decide that issue "unless and until absolutely necessary." *Smith v. Landfair*, 135 Ohio St. 3d 89, 2012-Ohio-5692 ¶ 13; *cf. State ex rel. Asti v. Ohio Dept. of Youth Servs.*, 107 Ohio St. 3d 262, 2005-Ohio-6432 ¶ 34 (identifying the "cardinal principle of judicial restraint" as, "if it is not necessary to decide more, it is necessary not to decide more") (internal quotation marks and citation omitted).

The Ninth District faced no such necessity in this case. This Court should vacate the judgment below and reaffirm the rule that courts decide constitutional questions only when necessary. Avoiding unnecessary constitutional decisions respects the separation-of-powers and judicial-restraint principles that animate this rule. *See, e.g.*, *Rescue Army v. Mun. Court of Los Angeles*, 331 U.S. 549, 571 (1947).

The Ninth District bypassed two significant opportunities to follow the rule and resolve this case on non-constitutional grounds—whether the local ordinance applies to the park owners at all and whether a state statute supersedes the local ordinance. Instead of completing the analysis of these issues, the appeals court included these half-finished inquiries as reasons to strike the law as unconstitutional. If the court had completed either analysis, it could have avoided the constitutional question altogether.

Statutory interpretation should precede constitutional analysis because it may make the latter unnecessary. Considering the meaning of the statute first is consistent with the "duty to refrain from deciding constitutional issues unless absolutely necessary." *Mahoning Educ. Ass'n of Developmental Disabilities v. State Employment Relations Bd.*, 137 Ohio St. 3d 257, 2013-Ohio-4654 ¶ 18 (resolving case on statutory grounds that appeals court had resolved on constitutional grounds). So too here. The court should have completed a statutory interpretation

of the ordinance. That analysis might have led to a holding that the ordinance does not apply to the park owners at all. Had it so held, the court would not have needed to consider the constitutionality of the ordinance. In fact, the Ninth District suggests that, had it based its holding on statutory interpretation, it likely would have held that the ordinance does not apply: "There is nothing in Chapter 1280 to indicate that Lodi intended to classify individual mobile homes or mobile home lots as the contemplated nonconforming use." App. Op. ¶ 21. That conclusion alone should have led the Ninth District to end the case on statutory grounds, not constitutional ones.

A further facet of the duty to refrain from deciding constitutional questions is the cannon of constitutional avoidance, which requires a court to consider whether the law may be construed to avoid any constitutional conflict. "'[A]ll legislative enactments enjoy a presumption of constitutionality, and' . . . . [c]ourts have a duty to liberally construe statutes to avoid constitutional infirmities." *State ex rel. Taft v. Franklin Cnty. Court of Common Pleas*, 81 Ohio St. 3d 480, 481 (1998) (quoting *State ex rel. Purdy v. Clermont Cnty. Bd. of Elections*, 77 Ohio St. 3d 338, 345-46 (1996)). The Ninth District turned this principle on its head. Instead of construing the statute to "avoid constitutional infirmity," *Taft*, 81 Ohio St. 3d at 481, it held the law unconstitutional because it found the law "ambiguous." App. Op. ¶ 18; *see id.* at ¶ 21(statute is ambiguous regarding whether "Lodi intended to classify individual mobile homes or mobile home lots as the contemplated nonconforming use" rather than the entire mobile-home park). The Ninth District decided this case on constitutional grounds even though it concluded that the statute is ambiguous as to whether the law was properly applied to the park owners at all. That conclusion should have caused the Ninth District to interpret the statute, not declare it unconstitutional. *Taft*, 81 Ohio St. 3d at 481.

Not only did the Ninth District wrongly skip over statutory interpretation it should have completed, it jumped to the broadest constitutional question without initially considering whether a state statute supersedes the Lodi ordinance. As with the statutory-interpretation question, the court should have given this home-rule issue full consideration before reaching the merits of the much broader constitutional claim—which would apply even if the General Assembly rescinded the state statute. *See, e.g.*, *State v. City of Upper Arlington*, No. 78AP-18, 1978 WL 216947, at *3 (10th Dist. June 29, 1978) (declining to reach a constitutional question after resolving the dispute on the basis of home-rule analysis). The appeals court considered, but did not resolve, whether the Village's definition of abandonment for mobile homes is in conflict with R.C. 713.15, which requires zoning laws to allow nonconforming uses to continue unless "voluntarily discontinued." App. Op. ¶ 15. Had the appeals court held the ordinance to be in conflict with a general law of the state, it would have had no cause to reach the constitutionality of the ordinance.

Like Ninth District's half-completed statutory analysis, the analysis the court did complete suggested that it would have resolved the home-rule issue in a way that would have avoided the constitutional question. That Ninth District noted that its own precedent required interpreting the Village ordinance to *not* apply to the park owners: "This Court has previously impliedly recognized, however, that it is not the presence or absence of a mobile home on an individual lot that might determine whether the individual lot has been abandoned. Rather, we recognized that it is the presence of intact utility connections which is key." App. Op. ¶ 27 (citation omitted). If the Ninth District followed this precedent and held that the park owners had not "abandoned" their empty lots, it could have avoided deciding whether the ordinance is facially unconstitutional.

Both the statutory interpretation and the home-rule analysis provided routes to avoid deciding the constitutionality of the Lodi zoning ordinance. Those issues meant that resolving the constitutional question was not necessary. It was thus error for the Ninth District to do so, and this Court should vacate and remand to fix that error.

B. The Ninth District's constitutional analysis shows why that question should have been its last resort, not its first instinct.

In deciding that the Lodi ordinance is unconstitutional, the Ninth District drew on a scattering of irrelevant considerations. That the appeals court sought support for its constitutional holding in these irrelevant questions underscores the problem with improperly considering a constitutional question.

The appeals court held the statute facially unconstitutional, but the vast majority of the court's analysis is irrelevant to the proper standard, established by the United States Supreme Court and adopted by this Court, for considering the constitutionality of a zoning ordinance. Though the Ninth District touched on a host of different constitutional provisions and statutes, its bottom line was to strike the ordinance as facially unconstitutional for invading the park owners' substantive due process rights. "Because L.Z.C. 1280.05(a) is ambiguous, arbitrary, and unreasonable, . . . it is unconstitutional on its face." App. Opp. ¶ 18; *see also id.* ¶ 25 (the zoning ordinance "negatively impacts the park owners' substantive due process rights").

Even if the Ninth District had properly reached the constitutional question after resolving the statutory issues described above, it should have applied a different framework. This Court and the United States Supreme Court have always applied a single inquiry for testing the constitutionality of zoning ordinances. The test is drawn from *Village of Euclid v. Ambler Realty Company*, in which the United States Supreme Court held that a zoning ordinance is constitutional unless its "provisions are clearly arbitrary and unreasonable, having no substantial

relation to the public health, safety, morals, or general welfare." 272 U.S. 365, 395 (1926). This Court has repeatedly used that standard in constitutional challenges to zoning ordinances: "In *Goldberg*, we reaffirmed the standard in *Euclid v. Ambler Realty Co.* as the appropriate test in a constitutional challenge to [a] zoning regulation in Ohio . . . ." *Jaylin Invs., Inc. v. Vill. of Moreland Hills*, 107 Ohio St. 3d 399, 2006-Ohio-4 ¶ 13 (citing *Goldberg Cos. v. Richmond Heights City Council*, 81 Ohio St. 3d 207, 210 (1998)); *see also Shemo v. Mayfield Heights*, 88 Ohio St. 3d 7, 9 (2000).

The *Euclid* analysis is deferential. "[A]ll zoning ordinances are presumed constitutional." *Shemo*, 88 Ohio St. 3d at 10. "The power of a municipality to establish zones, to classify property, to control traffic and to determine land-use policy is a legislative function which will not be interfered with by the courts unless such power is exercised in such an arbitrary, confiscatory or unreasonable manner as to be in violation of constitutional guarantees." *Willott v. Vill. of Beachwood*, 175 Ohio St. 557, 560 (1964). All zoning ordinances limit the uses to which the zoned land may be put, and elimination of one use of land in favor of another is a permissible purpose of a zoning ordinance. *Akron v. Chapman*, 160 Ohio St. 382, 386 (1953).

The *Euclid* analysis is also narrow. It considers only the ordinance and its relation to "the public health, safety, morals, or general welfare." *See Shemo*, 88 Ohio St. 3d at 9 (the test for the constitutionality of a zoning ordinance has only "a single criterion"). The *Euclid* analysis does not consider the reduced value of the land due to the zoning law, the legitimacy of the ordinance under home-rule principles, or even whether the ordinance is ambiguous.

Despite this deferential, narrow inquiry, the Ninth District's analysis was a broad and untargeted tour of issues *other than* the *Euclid* question. Most notably, the Ninth District

explored statutory meaning and home-rule principles instead of the relation of the ordinance to health, safety, morals, and the general welfare.

The Ninth District also flirted with a takings analysis. But a constitutional challenge to a zoning ordinance is distinct from a claim that a zoning ordinance constitutes a taking. The Takings Clause "does not bar government from interfering with property rights, but rather requires compensation . . . [for an] otherwise proper interference amounting to a taking. . . . Conversely, if a government action is found to be impermissible . . . that is the end of the inquiry. No amount of compensation can authorize such action." *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 543 (2005) (internal quotation marks and citation omitted); *see also Goldberg*, 81 Ohio St. 3d at 210 (distinguishing the challenges). Nonetheless, the Ninth District repeatedly invoked takings principles in the course of striking the ordinance. *See, e.g.*, App. Op. ¶ 17 (ordinance "would likely render any [abandoned] lot . . . useless for any practical purpose." (internal quotation marks omitted); *id.* ¶ 26 (the ordinance is "systematically squeezing the life out of the parks' businesses.").

The Ninth District purportedly modeled this analysis on a 2000 Attorney General opinion, App. Op. ¶ 18, but the opinion—unlike the Ninth District—correctly distinguishes takings analysis from other kinds of zoning challenges. The Attorney General's opinion does not directly address whether a zoning ordinance like this one is constitutional. Instead, it considers whether zoning authority over individual mobile-home pads is a local or state question and whether local zoning may be applied to those mobile-home pads or must be applied to a mobile-home park as a whole. Ohio Atty. Gen. Op. No. 2000-022, 2000 WL 431368, at *1. To be sure, the Attorney General opinion suggests that zoning individual pads rather than the whole park

would be of "questionable validity," but not by using the logic that the Ninth District used. *Id.* at *10.

* * * *

The Ninth District should not have reached the constitutional question without first interpreting the ordinance and measuring it against home-rule principles. And the constitutional analysis the Ninth District did conduct strayed from the well-worn path set out in precedent. Both errors counsel a decision vacating and remanding to the Ninth District so that it can undertake this additional analysis—which may entirely eliminate the need for resolving the constitutional question.

CONCLUSION

For all the foregoing reasons, the decision of the appeals court should be vacated.

Respectfully submitted,

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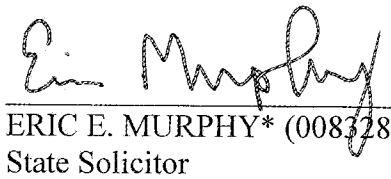

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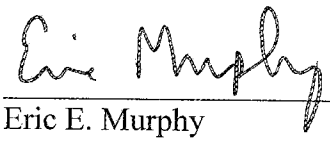

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