

**FOR PUBLICATION**  
**UNITED STATES COURT OF APPEALS**  
**FOR THE NINTH CIRCUIT**

GENE CASHMAN; ATHENA SUTSOS,  
*Plaintiffs-Appellants,*

v.

CITY OF COTATI, a municipal  
corporation,  
*Defendant-Appellee.*

No. 03-15066

D.C. No.

CV-99-03641-SBA/

RS

Northern District of  
California, Oakland

ORDER

Filed July 15, 2005

Before: Arthur L. Alarcón, Robert R. Beezer, and  
William A. Fletcher, Circuit Judges.

---

**ORDER**

This court suspended consideration of appellee's petition for rehearing and rehearing en banc pending the Supreme Court's issuance of a decision in *Lingle v. Chevron USA*, 125 S. Ct. 2074 (2005). The Supreme Court's opinion in *Lingle* requires us to grant the City of Cotati's petition for rehearing and to withdraw our opinion filed July 15, 2004.

We affirm the district court's judgment in favor of the City of Cotati. *See, e.g., Lentini v. Center for the Arts*, 370 F.3d 837, 850 (9th Cir. 2004) (affirming district court's judgment after trial on a different ground). Cashman's takings claim, which alleges that the City of Cotati's mobilehome park rent control ordinance effects an unconstitutional regulatory taking by failing to substantially advance a legitimate government interest, is foreclosed by *Lingle*. 125 S. Ct. at 2087 (holding

that the “substantially advances formula is not a valid takings test” (internal quotation marks omitted)).

The petition for rehearing is GRANTED. Our prior opinion filed July 15, 2004 is WITHDRAWN. The district court’s judgment in favor of the City of Cotati is AFFIRMED.



---

PRINTED FOR  
ADMINISTRATIVE OFFICE—U.S. COURTS  
BY THOMSON/WEST—SAN FRANCISCO

The summary, which does not constitute a part of the opinion of the court, is copyrighted  
© 2005 Thomson/West.