NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Lumber Co.,* 200 U. S. 321, 337.

SUPREME COURT OF THE UNITED STATES

Syllabus

YEE ET AL. *v.* CITY OF ESCONDIDO, CALIFORNIA

CERTIORARI TO THE COURT OF APPEAL OF CALIFORNIA, FOURTH APPELLATE DISTRICT

No. 90–1947. Argued January 22, 1992—Decided April 1, 1992

The Fifth Amendment's Takings Clause generally requires just compensation where the government authorizes a physical occupation of property. But where the Government merely regulates the property's use, compensation is required only if considerations such as the regulation's purpose or the extent to which it deprives the owner of the property's economic use suggests that the regulation has unfairly singled out the property owner to bear a burden that should be borne by the public as a whole. Petitioners, mobile home park owners in respondent Escondido, California, rent pads of land to mobile home owners. When the homes are sold, the new owners generally continue to rent the pads. Under the California Mobilehome Residency Law, the bases upon which a park owner may terminate a mobile home owner's tenancy are limited to, *inter alia,* nonpayment of rent and the park owner's desire to change the use of his land. The park owner may not require the removal of a mobile home when it is sold and may neither charge a transfer fee for the sale nor disapprove of a purchaser who is able to pay rent. The state law does not limit the rent the park owner may charge, but Escondido has a rent control ordinance setting mobile home rents back to their 1986 levels and prohibiting rent increases without the City Council's approval. The Superior Court dismissed lawsuits filed by petitioners and others challenging the ordinance, rejecting the argument that the ordinance effected a physical taking by depriving park owners of all use and occupancy of their property and granting to their tenants, and their tenants' successors, the right to physically permanently occupy and use the property. The Court of Appeal affirmed.

Held:

1.The rent control ordinance does not authorize an unwanted

physical occupation of petitioners' property and thus does not amount to a *per se* taking. Petitioners' argument—that the rent control ordinance authorizes a physical taking because, coupled with the state law's restrictions, it increases a mobile home's value by giving the homeowner the right to occupy the pad indefinitely at a sub-market rent—is unpersuasive. The government effects a physical taking only where it *requires* the landowner to submit to the physical occupation of his land. Here, petitioners have voluntarily rented their land to mobile home owners and are not required to continue to do so by either the City or the State. On their face, the laws at issue merely regulate petitioners' *use* of their land by regulating the relationship between landlord and tenant. Any transfer of wealth from park owners to incumbent mobile home owners in the form of sub-market rent does not itself convert regulation into physical invasion. Additional contentions made by petitioners—that the ordinance benefits current mobile home owners but not future owners, who must purchase the homes at premiums resulting from the homes' increased value, and that the ordinance deprives petitioners of the ability to choose their incoming tenants—might have some bearing on whether the ordinance causes a regulatory taking, but have nothing to do with whether it causes a physical taking. Moreover, the finding in *Loretto* v. *Teleprompter Manhattan CATV Corp.,* 458 U.S. 419, 439, n. 17—that a physical taking claim cannot be defeated by an argument that a landlord can avoid a statute's restrictions by ceasing to rent his property, because his ability to rent may not be conditioned on forfeiting the right to compensation for a physical occupation—has no relevance here, where there has been no physical taking. Since petitioners have made no attempt to change how their land is used, this case also presents no occasion to consider whether the statute, as applied, prevents them from making a change. Pp.5–11.

Syllabus

2.Petitioners' claim that the ordinance constitutes a denial of substantive due process is not properly before this Court because it was not raised below or addressed by the state courts. The question whether this Court's customary refusal to consider claims not raised or addressed below is a jurisdictional or prudential rule need not be resolved here, because even if the rule were prudential, it would be adhered to in this case. Pp.11–12.

3.Also improperly before this Court is petitioners' claim that the ordinance constitutes a regulatory taking. The regulatory taking claim is ripe for review; and the fact that it was not raised below does not mean that it could not be properly raised before this Court, since once petitioners properly raised a taking claim, they could have formulated, in this Court, any argument they liked in support of that claim. Nonetheless, the claim will not be considered because, under this Court's Rule 14.1(a), only questions set forth, or fairly included, in the petition for certiorari are considered. Rule 14.1(a) is prudential, but is disregarded only where reasons of urgency or economy suggest the need to address the unpresented question in the case under consideration. The Rule provides the respondent with notice of the grounds on which certiorari is sought, thus relieving him of the expense of unnecessary litigation on the merits and the burden of opposing certiorari on unpresented questions. It also assists the Court in selecting the cases in which certiorari will be granted. By forcing the parties to focus on the questions the Court views as particularly important, the Rule enables the Court to use its resources efficiently. Petitioners' question presented was whether the lower court erred in finding no physical taking, and the regulatory taking claim is related to, but not fairly included in, that question. Thus, petitioners must overcome the very heavy presumption against consideration of the regulatory taking claim, which they have not done. While that claim is important, lower courts have not reached conflicting results on the claim as they have on the physical taking claim. Prudence also dictates awaiting a case in which the issue was fully litigated below, to have the benefit of developed arguments and lower court opinions squarely addressing the question. Thus, the regulatory taking issue should be left for the California courts to address in the first instance. Pp.12–17.

224 Cal.App.3d 1349, 274 Cal.Rptr.551, affirmed.

O'CONNOR, J., delivered the opinion of the Court, in which REHNQUIST, C. J., and WHITE, STEVENS, SCALIA, KENNEDY, and THOMAS, JJ., joined. BLACKMUN, J., and SOUTER, J., filed opinions concurring in

the judgment.