No. 17-88

In the
Supreme Court of the United States

WAYSIDE CHURCH, ET AL.,
Petitioners,

v.

VAN BUREN COUNTY, MICHIGAN, ET AL.,
Respondents.

On Petition for a Writ of Certiorari to the
United States Court of Appeals for the Sixth Circuit

BRIEF OF CENTER FOR CONSTITUTIONAL JURISPRUDENCE AS *AMICUS CURIAE* IN SUPPORT OF PETITIONERS

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QUESTIONS PRESENTED

When Wayside Church fell behind on the property taxes for its youth camp, Van Buren County foreclosed and sold the youth camp for $206,000. After satisfying the church's $16,750 in penalties, taxes, and fees with the proceeds from the sale, the County pocketed the remaining 91% of the property's value as a windfall required by Michigan's property tax law. Likewise, the County kept the surplus when it seized and sold Myron Stahl's land and Henderson Hodgens's home to pay their small tax debts. Because there is no clear state court remedy for dispossessed property owners to recover the surplus proceeds from tax sales, the church, Stahl, and Hodgens filed a Fifth Amendment takings claim in federal court. But a divided Sixth Circuit panel held that *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172, 194 (1985), the Tax Injunction Act, and comity barred federal jurisdiction.

The questions presented are:

1. Does a local government violate the Takings Clause when it takes and sells tax delinquent property and keeps the surplus profit as a windfall?

2. Should the Court overrule or limit the portion of *Williamson County* that requires a property owner to sue in state court to "ripen" a federal takings claim, as suggested by many Justices of this Court? *See Arrigoni Enterprises, LLC v. Town of Durham*, 136 S. Ct. 1409 (2016) (Thomas,

J., joined by Kennedy, J., dissenting from denial of certiorari); *San Remo Hotel, L.P. v. San Francisco*, 545 U.S. 323, 349 (2005) (Rehnquist, C.J., and O'Connor, Kennedy, and Thomas, JJ., concurring in judgment).

3. Do the Tax Injunction Act and comity bar a federal court from hearing a claim that challenges the uncompensated retention of funds that exceed a tax debt but does not challenge the taxes or debt itself?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

TABLE OF AUTHORITIES – CONTINUED

Page(s)

TABLE OF AUTHORITIES - CONTINUED

Page(s)

TABLE OF AUTHORITIES - CONTINUED

TABLE OF AUTHORITIES - CONTINUED

Page(s)

TABLE OF AUTHORITIES - CONTINUED

Page(s)

IDENTITY AND INTERESTS OF AMICUS CURIAE[1]

The Center for Constitutional Jurisprudence is the public-interest law arm of the Claremont Institute. The Institute is a non-profit organization whose mission is to restore the principles of the American Founding to their rightful and preeminent authority in our national life. To safeguard these principles, the Center has represented parties in litigation in state and federal courts. The Center also participates as amicus curiae in significant cases before this Court. *See, e.g.*, *Arrigoni Enterprises, LLC v. Town of Durham*, 136 S. Ct. 1409 (2016) (cert. denied); *Horne v. Dep't of Agric.*, 135 S. Ct. 2419 (2015); *Koontz v. St. Johns River Water Mgmt. Dist.*, 133 S. Ct. 2586 (2013); *Arkansas Game & Fish Comm'n v. United States*, 133 S. Ct. 511 (2012); *Sackett v. Environmental Protection Agency*, 566 U.S. 120 (2012); *Stop the Beach Renourishment v. Florida Department of Environmental Protection*, 560 U.S. 702 (2010).

Among the principles of the American Founding that the Center champions is the fundamental right, expressed in the Fifth Amendment to the United States Constitution, to be free of governmental

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[1] Pursuant to Supreme Court Rule 37.6, the Center certifies that no counsel for any party authored this brief in whole or in part, and that no entity or person, aside from the Center, made any monetary contribution toward the brief's preparation and submission. The Center provided counsel for the Petitioners and Respondents timely notice of its intent to file this brief, and both parties provided blanket consent for the filing of amicus briefs.

takings of private property unless the property is taken solely for public use and just compensation is paid. Indeed, this safeguard against governmental abuse predates the United States Constitution. It is one of the oldest and most firmly established principles in the Anglo-American legal tradition.

For thirty years, the decision of the Court in *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172 (1985), has created unnecessary obstacles to claimants seeking to vindicate their rights under the Takings Clause in the federal courts. In so doing, *Williamson County* represents a departure from our founding principles that has caused significant harm to property owners seeking a federal forum for their federal civil rights claims under the Takings Clause. As a consequence, the Center has a strong interest in the Sixth Circuit Court of Appeals' decision that is the subject of the petition—a decision that largely relied on *Williamson County* to deprive petitioners of their day in federal court.

SUMMARY OF ARGUMENT

Among other things, petitioners urge the Court to revisit its 1985 decision in *Williamson County*. There, the *Williamson County* Court stated in dicta[2] that a federal taking claim under the Fifth

[2] In *Williamson County*, the Court held that a federal taking claim was ***premature*** and should therefore be dismissed. The Court concluded that the claimant had not yet obtained a final decision regarding application of the challenged zoning ordinance and regulations to its property. *Williamson County*, 473 U.S. at 186-94. The Court provided an additional ground for dismissal—namely, that the taking claim was unripe,

Amendment would not be ripe for judicial review by a federal court until the claimant first unsuccessfully sought and was denied just compensation in state court. *Williamson County,* 473 U.S. at 194, 197; *see also Stop the Beach Renourishment, Inc. v. Florida Dep't of Envtl. Prot.*, 560 U.S. 702, 742 (2010) (Kennedy, J., concurring) (stating that *Williamson County*'s state-procedures rule is dicta). As chronicled in the petition, *Williamson County*'s dictum has morphed into a powerful tool regularly employed by public agencies—and blessed by federal courts—to effectively deny federal taking claimants access to federal courts. Presumably to soften the rule's effect on federal taking claimants as a class, the Court has more recently made clear that the rule is merely prudential. But that half-hearted approach to taming *Williamson County*'s deleterious effects on federal taking claimants has served only to generate more confusion and deepen the divide among the circuit courts as to how precisely to apply the "prudential versus jurisdictional" distinction in particular cases.

The Center agrees with petitioners that *Williamson County*'s state-procedures rule, as applied in the case below and in many other takings cases, raises important federal questions about which the circuit courts are divided. The purpose of the Center's brief is to underscore that the call to

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because the claimant had not sought and been denied just compensation. *Id.* at 194-97. But having decided to dismiss the taking claim for failure to exhaust administrative remedies, the Court's discussion about ripeness was unnecessary to its ultimate decision and, therefore, dicta.

revisit *Williamson County* should not trigger the Court's traditional aversion to disturbing decades-old precedents. By the Court's own standards, *Williamson County* bears all the hallmarks of a precedent that cries out for reconsideration. As this brief explains, the decision's state-procedures rule was ill-founded from the start, with no basis in the Constitution or any of this Court's prior precedents; it has proven utterly unworkable; and it has become a paragon of arbitrariness—effectively closing the federal courthouse doors to one class of federal constitutional claimants (federal taking plaintiffs), while leaving those doors wide open for all other federal constitutional claimants, without any legitimate reason justifying such disparate treatment.

Williamson County clearly has not stood the test of time. That is why members of this Court have in recent years expressed serious doubts about the decision's continued viability and even called for its reconsideration in an appropriate case. *See, e g.*, *Arrigoni Enterprises, LLC v. Town of Durham*, 136 S. Ct. 1409 (2016) (Thomas, J., dissenting from denial of cert., joined by Kennedy, J.) (quoting *San Remo Hotel, L.P. v. City & County of San Francisco*, 545 U.S. 323, 349 (2005) (Rehnquist, C.J., joined by O'Connor, Kennedy, and Thomas, JJ., concurring in judgment)).

Experience consistently has shown that *Williamson County* suffers from grave shortcomings. The petition offers yet another example. This case comes to the Court with clean legal questions on undisputed material facts, and no procedural defects,

providing the Court with an appropriate vehicle for finally revisiting *Williamson County*. The Court should grant the petition.

REASONS FOR GRANTING REVIEW

Williamson County is unique among this Court's precedents.[3] It is unique, not just in the extent to which its state-procedures rule has effectively shut out an entire class of federal constitutional claimants from the federal courts, but also in the ways in which that rule so easily satisfies the criteria for reconsideration and thereby overcomes the strong presumption favoring *stare decisis*. *Williamson County* is ripe for reconsideration.

The Court considers a variety of factors when considering whether to revisit and possibly overturn a precedent. Among those that are relevant here are "whether the decision was well reasoned" and whether "experience has pointed up the precedent's

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[3] *See* J. David Breemer, *Ripeness Madness: The Expansion of Williamson County's Baseless "State Procedures" Takings Ripeness Requirement to Non-Takings Claims*, 41 Urb. Law. 615, 616 n.11 (2009) (hereinafter, Breemer, *Ripeness Madness*) (observing that, between 2005 and 2009 alone, the Court rejected the following petitions seeking to overturn *Williamson County*'s state-litigation rule: *Rockstead v. City of Crystal Lake*, 486 F.3d 963 (7th Cir. 2007), *cert. denied*, 128 S. Ct. 415 (2007); *McNamara v. City of Rittman*, 473 F.3d 633 (6th Cir. 2007), *cert. denied*, 128 S. Ct. 67 (2007); *Torromeo v. Town Of Fremont*, 438 F.3d 113 (1st Cir. 2006), *cert. denied*, 127 S. Ct. 257 (2006); *Hoagland v. Town of Clear Lake*, 415 F.3d 693 (7th Cir. 2005), cert. denied, 547 U.S. 1004 (2006); *SFW Arecibo, Ltd. v. Rodriguez*, 415 F.3d 135 (1st Cir. 2005), *cert. denied*, 546 U.S. 1075 (2005).

shortcomings." *Citizens United v. Federal Election Comm'n*, 558 U.S. 310, 362-63 (2010). "[P]articularly where constitutional issues are involved, '[t]his Court has shown a readiness to correct its errors even though of long standing [vintage].'" *Vasquez v. Hillery*, 474 U.S. 254, 269 (1986) (Powell, J., dissenting) (quoting *United States v. Barnett*, 376 U.S. 681, 699 (1964)). That is because, "in constitutional cases," "correction through legislative action is practically impossible." *Payne v. Tennessee*, 501 U.S. 808, 828 (1991) (internal citation and quotation marks omitted).

Williamson County's state-procedures rule—which negatively affects the ability of one class of federal constitutional claimants to vindicate their rights in federal court—was poorly reasoned, and has proven to be grossly arbitrary in practice.

I. *Williamson County*'s State-Procedures Rule Was Not Well Reasoned

Williamson County's state-procedures rule was "created without a sound doctrinal basis," Breemer, *Ripeness Madness*, *supra*, at 617, and has been roundly criticized by academics and practitioners almost since its inception.[4] The *Williamson County*

[4] *See, e.g.*, Michael M. Berger, *The Ripeness Game: Why Are We Still Forced To Play*, 30 Touro L. Rev. 297 (2014) (hereinafter, Berger, *The Ripeness Game*); Michael M. Berger & Gideon Kanner, *Shell Game! You Can't Get There from Here: Supreme Court Ripeness Jurisprudence in Takings Cases at Long Last Reaches the Self-Parody Stage*, 36 Urb. Law. 671, 673 (2004); Michael M. Berger, *Supreme Bait & Switch: The Ripeness Ruse in Regulatory Takings*, 3 Wash. U.J.L. & Pol'y 99, 102 (2000); J. David Breemer, *You Can Check Out But You Can Never Leave:*

Court described the rule as a requirement needed to make a taking claim "ripe." *Williamson County*, 473 U.S. 172, 194 (1985). According to the Court, "a property owner has not suffered a violation of the Just Compensation Clause until the owner has unsuccessfully attempted to obtain just compensation through the procedures provided by the State for obtaining such compensation. *Id.* at 195. In crafting its new state-procedures rule, the Court relied principally on two cases: *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986 (1984), and *Parratt v. Taylor*, 451 U.S. 527 (1981). But the Court's new rule—and its justification for it—rest on shaky grounds. *See, e.g.*, *San Remo*, 545 U.S. at 349 (Rehnquist, C.J., joined by O'Connor, Kennedy, and Thomas, JJ., concurring in judgment) (observing that *Ruckelshaus* and *Parratt* "provided limited support for the state-litigation requirement").

The Takings Clause provides that "private property [shall not] be taken for public use, without just compensation." U.S. Const. amend V. The *Williamson County* Court assumed, without any explanation, that a taking claimant is "without just compensation" only after he seeks and is denied compensation from the state; in other words, it is a

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The Story of the San Remo Hotel—The Supreme Court Relegates Federal Takings Claims to State Courts Under a Rule Intended to Ripen the Claims for Federal Review, 33 B.C. Envtl. Aff. L. Rev. 247, 283-298 (2006); Thomas E. Roberts, *Ripeness and Forum Selection in Fifth Amendment Takings Litigation*, 11 J. Land Use & Envtl. L. 37, 71 (1995); Timothy V. Kassouni, *The Ripeness Doctrine and the Judicial Relegation of Constitutionally Protected Property Rights*, 29 Cal. W. L. Rev. 1 (1993).

state court's denial of compensation that ripens his taking claim. But that is not the historic understanding of the Takings Clause.

Until *Williamson County*, courts viewed payment of compensation as "a condition ***precedent*** to the exercise of the government's power to take property." J. David Breemer, *The Rebirth of Federal Takings Review? The Court's "Prudential" Answer to Williamson County's Flawed State Litigation Ripeness Requirement*, 30 Touro L. Rev. 319, 325 (2014) (hereinafter, Breemer, *Rebirth*) (emphasis added). Put differently, the Just Compensation Clause was understood to be "self-executing," so that the remedy of "just compensation" damages was available to a claimant *immediately* upon the occurrence of the taking—not only after he had sought and been denied compensation by the state. *See, e.g.*, *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304, 315 (1987) (referring to "the self-executing character of the constitutional provision with respect to compensation"); *see also Seven Up Pete Venture v. Schweitzer*, 523 F.3d 948, 953-54 (2008) ("The Supreme Court has long recognized that the just compensation clause of the Fifth Amendment is self-executing . . . ."). As Justice Brennan explained in his dissenting opinion in *San Diego Gas & Elec. Co. v. City of San Diego*, 450 U.S. 621 (1981):

> The language of the Fifth Amendment prohibits the "tak[ing]" of private property for "public use" without payment of "just compensation." As soon as private property has been

> taken, whether through formal condemnation proceedings, occupancy, physical invasion, or regulation, the landowner has already suffered a constitutional violation, and the self-executing character of the constitutional provision with respect to compensation . . . is triggered. This Court has consistently recognized that the just compensation requirement in the Fifth Amendment is not precatory: once there is a "taking," compensation must be awarded.

Id. at 654 (internal citations and quotation marks omitted).

In an effort to find support for its newly minted state-procedures rule, the Court relied principally upon its decisions in *Ruckelshaus* and *Parratt*. In *Ruckelshaus*, the Court merely held that a property owner's claim for ***injunctive*** relief against the United States was barred until the owner satisfied the statutory requirement to pursue a damages remedy in the Court of Federal Claims under the Tucker Act. *Ruckelshaus*, 467 U.S. at 1020. Of course, *Ruckelshaus* did not concern a claim for ***damages*** following a completed taking, and the decision certainly does not stand for the proposition that a taking claim for damages is premature until after the claimant pursues a state remedy.

Parratt also does not support the state-procedures rule. As the *Williamson County* Court

itself conceded, *Parratt* is an "imperfect" analogy. *Williamson County*, 473 U.S. at 195. In *Parratt*, the Court held that a plaintiff alleging violation of his procedural due process rights had to ripen his claim by first availing himself of the adequate post-deprivation remedy provided by state law. *Parratt*, 451 U.S. at 544. But by definition, a procedural due process claim assumes that the state has failed to provide adequate process. Thus, it makes sense to require a plaintiff to pursue all state procedural remedies in advance of bringing a claim under the Due Process Clause. By contrast, and as explained above, a Takings Clause claim is different, as it accrues the moment a taking occurs without payment of just compensation, and therefore requires no further steps to ripen it. *Parratt* bears little relevance in the takings context where, prior to *Williamson County*, this Court had long declared the Just Compensation Clause to be "self-executing"—i.e., requiring no additional procedural steps for a claimant to ripen his federal taking claim.

In sum, if a taking of private property gives the claimant an immediate right to "just compensation" damages, then there is nothing for him to ripen. The claim is ripe the moment the taking occurs. *Williamson County*'s state-procedures rule rests on a faulty—and a historic—understanding of the Takings Clause.

II. *Williamson County*'s State-Procedures Rule Arbitrarily Discriminates Against One Class of Federal Constitutional Claimants

As described in great detail in the petition, the practical effect of *Williamson County*'s state-procedures rule has been to bar federal taking claimants from federal court. That runs counter to the intent and purpose of 42 U.S.C. section 1983—which Congress enacted, pursuant to section 5 of the Fourteenth Amendment, in order to guarantee protection of certain rights "secured by the Constitution and laws" against infringement by states and local governments. 42 U.S.C. § 1983. Through the years since section 1983's enactment, this Court has consistently viewed Section 1983 as a vehicle for providing federal rights plaintiffs a federal forum for their claims.

In *Mitchum v. Foster*, 407 U.S. 225, 238-39 (1972), this Court explained that Section 1983 was the result of "the new structure of law that emerged in the post-Civil War era"—one that saw "the Federal Government as a guarantor of basic federal rights against state power." According to the Court, the purpose of Section 1983 was to "throw open the doors of the United States courts to individuals who were threatened with, or who had suffered, the deprivation of constitutional rights, . . . and to provide these individuals immediate access to the federal courts." *Patsy v. Bd. of Regents*, 457 U.S. 496, 504 (1982) (emphasis added) (internal citations and quotation marks omitted) (holding that Section 1983 plaintiffs could not be required to pursue

administrative remedies prior to going to federal court); *Mitchum*, 407 U.S. at 239 (Section 1983 "opened the federal courts to private citizens."). As the Court eloquently stated in *Mitchum*, "[t]he very purpose of § 1983 was to interpose the federal courts between the States and the people, as guardians of the people's federal rights." *Mitchum*, 407 U.S. at 242; *see also* Steven Stein Cushman, "Municipal Liability Under § 1983: Toward a New Definition of Municipal Policymaker," 34 B.C. L. Rev. 693 (1993) ("The primary purpose of § 1983 is to allow federal courts to prevent local governments from determining when and which federal laws will be enforced."); *see also Steffel v. Thompson*, 415 U.S. 452, 472-73 (1974) ("When federal claims are premised on [Section 1983] . . . we have not required exhaustion of state judicial or administrative remedies . . . ." (emphasis added)); *Felder v. Casey*, 487 U.S. 131, 152 (1988) ("'Whatever springs the State may set for those who are endeavoring to assert rights that the State confers, the assertion of federal rights, when plainly and reasonably made, is not to be defeated under the name of local practice.'").

This Court has been unequivocal in its views about Section 1983 and the underlying concerns that the statute addresses. Assessing the "long and extensive" debates surrounding passage of Section 1983, this Court has concluded that "[i]t is abundantly clear that one reason the legislation was passed was to afford a federal right in federal courts because, by reason of prejudice, passion, neglect, intolerance or otherwise, state laws might not be enforced and the claims of citizens to the enjoyment

of rights, privileges, and immunities guaranteed by the Fourteenth Amendment might be denied by the state agencies." *Monroe v. Pape*, 365 U.S. 167, 180 (1961), *overruled on other grounds by Monell v. Dep't of Soc. Servs.*, 436 U.S. 658 (1978). Indeed, as the *Monroe* Court observed, "states' rights" opponents of Section 1983 complained that it was just "a covert attempt to transfer another large portion of jurisdiction from the State tribunals, to which it of right belongs, to those of the United States." *Monroe*, 365 U.S. at 179. Despite such objections, Section 1983 became law and has proven effective in empowering individuals to vindicate their federal constitutional rights against state and local governments.

In accordance with the history and purpose of Section 1983, as interpreted by the courts, plaintiffs generally are entitled to litigate their federal rights claims in federal court. But with its decision in *Williamson County*, this Court created one glaring and major exception: Individuals asserting their Fifth Amendment right to just compensation for a taking must first seek and be denied just compensation ***in state court*** in order to ripen their claim for federal-court review. But in practice, preclusion rules bar federal taking plaintiffs from federal court once they have litigated their claims to compensation in state court—as this Court confirmed in *San Remo*, 545 U.S. 323.

In *San Remo*, this Court considered the plight of a federal taking plaintiff who had complied with *Williamson County*'s state-procedures rule by seeking and being denied just compensation in state

court, only to find itself barred from federal court. *San Remo*, 545 U.S. at 326. Because the parties had not directly raised and briefed the issue, the merits of the judicially created state-procedures rule—the very source of the plaintiff's problem—was not before the Court for reconsideration. *Id.* at 352 (Rehnquist, C.J., and O'Connor, Kennedy, and Thomas, JJ., concurring). Instead, the Court considered the interplay between two federal statutes: Section 1983's guarantee of a federal forum to federal rights claimants and the Full Faith and Credit Act's effect of barring federal-court access to plaintiffs with state-court judgments. *Id.* at 341-45.

The San Remo Hotel was a hotelier that challenged a San Francisco ordinance requiring it to pay a $567,000 fee to convert hotel units from residential to tourist use. After the California courts rejected the San Remo Hotel's state-law taking claims, it pursued federal taking claims in federal court. The city sought dismissal based on the Full Faith and Credit Act, arguing that the state courts already had decided the very same issues raised by the San Remo Hotel's federal taking claims. The San Remo Hotel argued for an exception to the Act's preclusion rules, largely on the grounds that Section 1983 entitled him to a federal forum after he had complied with Williamson County's state-procedures rule. *Id.* at 327-331, 341-45.

This Court was presented with the question of whether to create an exception to the Full Faith and Credit Act "in order to provide a federal forum for litigants who seek to advance federal takings claims that are not ripe until the entry of a final state

judgment denying just compensation." *Id.* at 337. This Court declined to do so, reasoning that, regardless of the unfairness of effectively banishing federal taking claims from federal court, it was "not free to disregard the full faith and credit statute solely to preserve the availability of a federal forum." *Id.* at 347. The Court's holding "ensures that litigants who go to state court to seek compensation will likely be unable later to assert their federal takings claims in federal court." *Id.* at 351 (Rehnquist, C.J., and O'Connor, Kennedy, and Thomas, JJ., concurring). As a consequence, federal taking claimants have the dubious honor of being the only federal rights plaintiffs to be categorically barred from federal court. *See* Michael M. Berger, *Supreme Bait & Switch: The Ripeness Ruse in Regulatory Takings*, 3 Wash. U. J.L. & Pol'y 99, 123 (2000) (hereinafter, Berger, *Supreme Bait*) ("No other federally protected rights have the Williamson County precondition to federal litigation. All other federally protected rights may be vindicated in federal court without first having to pass through a state court filter, if the plaintiff so chooses."); *see also* John F. Preis, "Alternative State Remedies in Constitutional Torts," 40 Conn. L. Rev. 723, 725 (2008) ("[T]he Court has not yet extended this rule [requiring state-court litigation of a federal rights claim] to cases outside the takings context . . . .").

Faced with a conflict between two federal statutes—Section 1983's federal-court guarantee and the Full Faith and Credit Act—the *San Remo* Court considered it necessary to preserve the latter's integrity. But behind the conflict was a judicially created rule that was not (and could not) be

addressed by the Court—namely, *Williamson County*'s state-procedures rule. As four Justices of the *San Remo* Court lamented, the correctness of the state-procedures rule was not before the Court for reconsideration. Writing for himself, and Justices O'Connor, Kennedy, and Thomas, Chief Justice Rehnquist concluded his concurring opinion in *San Remo* with the following observation:

> I joined the opinion of the Court in *Williamson County*. But further reflection and experience lead me to think that the justifications for its state-litigation requirement are suspect, while its impact on takings plaintiffs is dramatic. Here, no court below has addressed the correctness of *Williamson County*, neither party has asked us to reconsider it, and resolving the issue could not benefit petitioners. In an appropriate case, I believe the Court should reconsider whether plaintiffs asserting a Fifth Amendment takings claim based on the final decision of a state or local government entity must first seek compensation in state courts.

San Remo, 545 U.S. at 352 (Rehnquist, C.J., and O'Connor, Kennedy, and Thomas, JJ., concurring).

In the wake of *San Remo*, an irreconcilable tension persists between (1) a judicially created rule that effectively extinguishes federal-court access for federal taking claimants, and (2) Section 1983's promise of federal-access for all federal rights

claimants, as recognized by this Court through the years. The Sixth Circuit decision perpetuates the conflict—and the arbitrary discrimination against federal takings claimants—which only this Court can resolve. *See* Berger, *The Ripeness Game*, *supra*, at 301 ("No other constitutional claimant is made to run a litigational gauntlet like the one established for property owners. Not one."). With no facts in dispute, and the viability of *Williamson County*'s state-procedures rule squarely at issue, this case presents an opportunity for the Court to reconsider that rule in light of its impact on a class of Section 1983 litigants (federal taking claimants) that is just as deserving of federal-court protection as any other. As the late Chief Justice Rehnquist remarked, there is "no reason why the Takings Clause of the Fifth Amendment, as much a part of the Bill of Rights as the First Amendment or Fourth Amendment, should be relegated to the status of a poor relation." *Dolan v. City of Tigard*, 512 U.S. 374, 392 (1994).

CONCLUSION

For the reasons stated above, and those stated in the petition, the Court should grant the petition.

DATED: August 2017

Respectfully submitted,

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