SUPREME COURT OF THE STATE OF LOUISIANA

DOCKET NO. 2024-C-00055

WATSON MEMORIAL SPIRITUAL TEMPLE OF CHRIST
D/B/A WATSON MEMORIAL TEACHING MINISTRIES, ET AL.,

Plaintiffs – Appellants,

v.

GHASSAN KORBAN, in his Capacity as Executive Director of the Sewerage and Water Board of New Orleans,

Defendant – Appellee.

On Writ of Certiorari and/or Review
Orleans Civil District Court, Parish of Orleans, No. 2022-10955,
Court of Appeal, Fourth Circuit, No. 2023-CA-0293

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION AND NATIONAL FEDERATION OF INDEPENDENT BUSINESS SMALL BUSINESS LEGAL CENTER, INC., IN SUPPORT OF PLAINTIFFS-APPELLANTS

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Pursuant to Supreme Court of Louisiana Rule VII, Section 12, Pacific Legal Foundation (PLF) and National Federation of Independent Business Small Business Legal Center, Inc. (NFIB Legal Center) respectfully submit this brief amicus curiae in support of Plaintiffs-Appellants Watson Memorial Spiritual Temple of Christ, et al. This brief is conditionally submitted with the accompanying motion seeking leave to file.

INTEREST OF AMICI CURIAE

PLF was founded over 50 years ago and is widely recognized as the most experienced nonprofit legal foundation of its kind and regularly litigates matters affecting property rights in state and federal courts across the country. PLF attorneys have participated as lead counsel and amicus curiae in several landmark United States Supreme Court cases in defense of the right of individuals to make reasonable use of their property, and the corollary right to obtain just compensation when that right is infringed. *See, e.g., Sheetz v. Cnty. of El Dorado*, No. 22-1074, 2024 WL 1588707 at *1 (Apr. 12, 2024); *Knick v. Twp. of Scott*, 588 U.S. 180 (2019); *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595 (2013); *Palazzolo v. Rhode Island,* 533 U.S. 606 (2001); *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987). PLF has represented these Plaintiff-Appellants and similarly-situated property owners[1]

[1] Pacific Legal Foundation's representation of the Plaintiff-Appellants in this case was limited solely to the filing of the petition for writ of certiorari and terminated when the United States Supreme Court denied the petition. Pacific Legal Foundation did not represent these or any other property owners in other phases of the litigation.

on a petition for writ of certiorari to the U.S. Supreme Court in *Ariyan Inc. v. Sewerage & Water Board of New Orleans*, 143 S. Ct. 353 (2022), arguing that the Fifth Amendment's Just Compensation Clause requires reasonably prompt payment after a taking, notwithstanding Louisiana's constitutional bar to property owners recovering civil money judgments—including constitutionally-mandated just compensation judgments—from government entities unless and until they agree to pay. The federal courts relied on Louisiana state court precedent to ensure payment to owners of taken and damaged property, and PLF urges this Court to allow such owners to obtain a writ of mandamus to compel intractable governments that refuse to abide by their Louisiana and federal constitutional duties.

NFIB Legal Center is a nonprofit, public interest law firm established to provide legal resources and be the voice for small businesses in the nation's courts through representation on issues of public interest affecting small businesses. It is an affiliate of the National Federation of Independent Business, Inc. (NFIB), which is the nation's leading small business association. NFIB's mission is to promote and protect the right of its members to own, operate, and grow their businesses. NFIB represents, in Washington, D.C., and all 50 state capitals, the interests of its members. NFIB Legal Center has long stood for the principle that government intrusion on property rights harms small business owners, and has filed amicus briefs to that end.

INTRODUCTION AND SUMMARY OF ARGUMENT

When a government takes property, the U.S. and Louisiana Constitutions require it to actually pay just compensation. *See* La. Const. art. I, § 4(B) (just compensation "shall" be "paid."); U.S. Const. amend. V ("[N]or shall private property be taken for public use, without just compensation."). This command is not conditional and forecloses any argument that political subdivisions must first agree to pay, or that the state must adopt implementing legislation authorizing payment before property owners may invoke a remedy enforcing the right to just compensation. To require the very political subdivision that violated the property owners' constitutional rights to first consent to this essential limitation on its power would eviscerate the constitutional mandate of any effectual meaning. *See Tanner v. Beverly Country Club*, 47 So. 2d 905, 912–13 (La. 1950) (Louisiana constitution delineates the boundaries of governmental actions both explicitly and implicitly).

This Court should hold that the right to just compensation is self-executing, and that Louisiana courts may issue writs of mandamus ordering the Sewerage & Water Board—and any future nonpaying entities—to pay for the property it took and damaged. As the court below correctly held, Louisiana's established law as to when mandamus is appropriate applies to the non-discretionary act of paying a just compensation judgment. States may not "sidestep the Takings Clause" where "'traditional property law principles,' plus historical practice and [U.S. Supreme] Court's precedents" requires payment of just compensation. *Tyler v. Hennepin Cnty.*,

598 U.S. 631, 638 (2023) (citation omitted). Incorporation of the Fifth Amendment, which limits the authority of states via the Fourteenth Amendment's due process clause, *requires* the payment of just compensation, notwithstanding any limitations under state law. *Chicago, B. & Q.R. Co. v. City of Chicago*, 166 U.S. 226, 236 (1897) ("[t]he legislature may prescribe a form of procedure to be observed in the taking of private property for public use, but it is not due process of law if provision be not made for compensation.").

This flows from two fundamental principles. First, any taking of property *must* be accompanied or promptly followed by payment of just compensation as a matter of self-executing constitutional law. *See Joslin Mfg. Co. v. City of Providence*, 262 U.S. 668, 677 (1923) ("[T]he requirement of just compensation is satisfied when the public faith and credit are pledged to a reasonably prompt ascertainment and payment, and there is adequate provision for enforcing the pledge."). This is not dependent on the legislature first adopting enabling legislation. *Yearsley v. W.A. Ross Constr. Co.*, 309 U.S. 18, 21 (1940) ("[I]f the authorized action … does constitute a taking of property for which there must be just compensation under the Fifth Amendment, the Government has impliedly promised to pay that compensation and has afforded a remedy for its recovery…."). The self-executing, mandatory nature of a government's obligation to pay just compensation means that government officials have a ministerial, non-discretionary duty to remit the payments to owners of taken and damaged property. *See First English Evangelical Lutheran Church of Glendale v. Los*

Angeles Cnty., 482 U.S. 304, 315–16 (1987) ("[I]t has been established at least since *Jacobs v. United States*, 290 U.S. 13, 54 S. Ct. 26, 78 L. Ed. 142 (1933), that claims for just compensation are grounded in the Constitution itself").

Second, contrary to the Sewerage Board's assertion, an inverse condemnation judgment for just compensation isn't at all like a tort damages judgment. The government's obligation to pay just compensation for any taking is the same whether the taking is the result of exercise of the eminent domain power (expropriation) or of the police power (inverse condemnation). *Avenal v. State*, 99-C-0127 (La. App. 4 Cir. 3/3/99), 757 So.2d 1, 12, *writ denied*, 2000-CC-1077 (La. 6/23/00), 767 So.2d 41 ("in cases where inverse condemnation rather than formal expropriation of property has taken place[,] ... [t]here is no basis in Louisiana law for the different treatment of property owners in these two situations"); *Cedar Point Nursery v. Hassid*, 594 U.S. 139, 148–49 (2021) (listing a multitude of regulatory actions that can result in a taking under the Court's modern precedent); *Sheetz v. Cnty. of El Dorado*, No. 22-1074, 2024 WL 1588707, at *4 (Apr. 12, 2024) ("The Takings Clause's right to just compensation coexists with the States' police power to engage in land-use planning.").

Both eminent domain and inverse condemnation reflect the same constitutional right. *Avenal*, 757 So.2d at 12 ("The same substantive constitutional right (the right, secured by Art. I, § 4 of the 1974 Louisiana Constitution, to receive *full compensation* for the governmental taking of private property) is triggered by both.") (emphasis added). Both require payment of just compensation without

unreasonable delay to comply with the constitutional limitations on government takings of property. *Sweet v. Rechel*, 159 U.S. 380, 401 (1895) (just compensation payment must be remitted without "unreasonable delay"). And, unlike tort damages, just compensation is designed to substitute equivalent cash for the property taken, not as remediation for injuries.

This Court should adopt *Avenal*'s reasoning and reject the Sewerage Board's argument that the square peg of a just compensation judgment can be fit into the round hole of tort money judgments. When the government affirmatively condemns property using the eminent domain power, it cannot refuse to pay or unreasonably delay payment. So too must the government remit just compensation judgments without unreasonable day. And if it refuses, property owners must be enabled to seek writs of mandamus to recover what is rightfully theirs. Any ruling to the contrary would effectively render the just compensation clause meaningless.

ARGUMENT

I. THE SELF-EXECUTING NATURE OF THE JUST COMPENSATION REMEDY MEANS THAT, ONCE THE AMOUNT IS DETERMINED, GOVERNMENT HAS A MINISTERIAL, NON-DISCRETIONARY, DUTY TO PAY

Once a court determines that property is taken, the government must pay just compensation, defined as that amount of money that reflects the full and perfect equivalent of the value of the taken property. *United States v. Miller*, 317 U.S. 369, 373 (1943) ("The owner is to be put in as good position pecuniarily as he would have occupied if his property had not been taken."). The Louisiana Constitution extends

this right to property that is damaged as well as fully taken. La. Const. art. I, § 4. Although paid in money, just compensation is no ordinary damages remedy because it is explicitly required by both the federal and state constitutions. La. Const. art. I, § 4(B); U.S. Const. amend. V. There is no other option. As Justice Hughes noted, converting real property into liquid cash does not alter the fact that the money stands in place of the taken property. *See Mellor v. Parish of Jefferson*, 2022-CC-01713 (La. 9/1/23), 370 So.3d 388, 399 (Hughes, J., dissenting) ("This is not an attempt to enforce a money judgment against a governmental entity. Rather, it is the return of property that has been determined by this court to have been unconstitutionally taken.").[2] Payment of just compensation is, as the United States Supreme Court emphasizes, a "self-executing" constitutional right. *First English*, 482 U.S. at 315. Because a government that takes or damages property has no option to evade paying just compensation, *Baltimore & Ohio R.R. Co. v. United States*, 298 U.S. 349, 368 (1936) ("The just compensation clause may not be evaded or impaired…."), the payment itself is best described as a ministerial, not discretionary, duty. This means that, in the absence of a statutory remedy, common law remedies ensure enforcement of the right. *Sale v. State Hwy. & Public Works Comm'n*, 89 S.E.2d 290, 295 (N.C. 1955); *Swift & Co. v. City of Newport News*, 52 S.E. 821, 824–25 (Va. 1906); *Campbell v.*

[2] *Cf. National Fed. of Ind. Business v. Sebelius*, 567 U.S. 519, 551 n.5 (2012) ("The fact that the Fifth Amendment requires the payment of just compensation when the Government exercises its power of eminent domain does not turn the taking into a commercial transaction between the landowner and the Government[.]").

Arkansas State Hwy. Comm'n, 38 S.W.2d 753, 755 (Ark. 1931). As such, aggrieved property owners may seek writ relief ordering the government to remit payment.

This principle is well established nationwide. For example, *Miller v. Port of N.Y. Auth.*, 15 A.2d 262, 268 (N.J. 1939), held that just compensation must be paid for properties that are "taken, destroyed or damaged for public purposes" and "this duty is a ministerial one for the performance of which mandamus is the appropriate remedy, and so it has been uniformly held in state." Similarly, *State ex rel. Sharp v. .62033 Acres*, 110 A.2d 1, 8–9 (Del. Super. Ct. 1954), *aff'd*, 112 A.2d 857 (Del. 1955), held that a government's obligation "to pay the amount ultimately determined as just compensation in the cause shall be absolute" and therefore "[t]he availability of a writ of mandamus to enforce such clear right becomes apparent." *See also Robertson v. State Hwy. Comm'n*, 420 P.2d 21, 24 (Mont. 1966) (court ordered state treasurer and state auditor to pay just compensation award); *People ex rel. Hopkins v. Metz*, 198 N.Y. 606, 607 (1910) (per curiam affirmance of court order in mandamus to compel payment of just compensation); *English v. Multnomah Cnty.*, 209 P.3d 831, 835–36 (Or. App. 2009) (noting order to trial court to issue writ of mandamus directing county to pay judgment of just compensation); *Larkin v. Bd. of Cnty. Comm'rs of Nemaha Cnty.*, 223 P.2d 987, 990, 992 (Kan. 1950) (approving mandamus action to compel the payment of an award in a highway condemnation proceeding); *Schick v. Fla. Dep't of Agric. & Consumer Svcs.*, 586 So.2d 452, 453 (Fla. App. 1991) (mandamus action necessary where government refused or failed to pay final just compensation

judgment); *State ex rel. Gibson v. Pizzino*, 266 S.E.2d 122, 124 (W. Va. 1979) (writ of mandamus may issue to enforce final judgment of just compensation).

The Michigan Supreme Court held that a writ of mandamus was the "appropriate remedy" to enforce what would otherwise be "an act amounting to confiscation under the Constitution." *Burke v. City of River Rouge*, 215 N.W. 18, 18 (Mich. 1927). The court explained that the property owners "had a clear legal right to the payment of the sum fixed by the jury and confirmed by the court for the value of the property taken by the city and then in its possession, and the municipality owed a clear legal duty to make such payment." *Id.*; *see also, Balch v. City of Detroit*, 67 N.W. 122, 123 (Mich. 1896) (Because a property owner has "a right to insist" on payment of just compensation, "[t]he writ will therefore issue requiring the respondents to pay the amount of such award, or, if the necessary funds have not been provided, to take the necessary measures to levy, collect, and pay the same."); *Sale*, 89 S.E.2d at 296 ("[N]othing short of actual payment, or its equivalent, constitutes just compensation. The entry of a judgment is not sufficient"). As the New Jersey Supreme Court stated, when the government wishes to take property, "it must comply with the constitutional mandate and pay" even if no statute expressly provides for compensation. *Lomarch Corp. v. Mayor of Engelwood*, 237 A.2d 881, 884 (N.J. 1968).

Writ relief is particularly appropriate when a government has unreasonably delayed payment. The Illinois Supreme Court connected the practical effect of a self-

executing constitutional requirement of just compensation to the need for reasonably prompt payment in *People ex rel. Wanless v. City of Chicago*, 38 N.E. 2d 743, 746 (Ill. 1941): "This requirement is not satisfied when the judgment is entered, but only when the compensation is actually paid." *Id.* If just compensation is *not* paid without reasonable delay, then it is "essential" that property owners have an "adequate" remedy. *Id.*

Courts are keenly aware that landowners whose property is taken or damaged for public use through the exercise of the power of eminent domain are involuntary creditors with no right to prevent the city from taking or damaging their property.

> To place [an owner of taken property] in the same class with the person who voluntarily became a creditor of the municipality, with knowledge of its financial condition, and then to deny him the right to payment until all prior judgment creditors have been paid or given a chance to be paid, is a denial of his right to just compensation. It is no answer to say that he is entitled to interest on his judgment until he is paid. His right to payment of the judgment itself cannot be thus circumscribed.

Id. In fact, court decisions across the country hold that the constitutional mandate that just compensation be *paid*, not merely dangled as a potential recovery, reflects the injustice of forcing property owners into involuntary creditor status. *See, e.g.*, *Duncan v. City of Louisville*, 71 Ky. 98, 104 (Ct. App. 1871) (former owners of taken property are "involuntary vendors"); *Community Redevelopment Agency v. Force Electronics*, 55 Cal. App. 4th 622, 635 (1997) (court required immediate payment of just compensation, rejecting government's request to spread payment over ten years and requiring property owners to become "involuntary unsecured lender[s]" to

condemning agencies); *United States v. 9.94 Acres of Land*, 51 F. Supp. 479, 483–84 (E.D.S.C. 1943) (just compensation means more than a property owner's "estate or his children or his grandchildren are to receive installment payments and perhaps inherit a law suit in the far future"); *United States v. Bauman*, 56 F. Supp. 109, 115 (D. Or. 1943) (refusing to allow government to pay just compensation in installments over time).

In *Heimbecher v. City and County of Denver*, 50 P.2d 785 (1935), the Colorado Supreme Court sustained mandamus against the city council, mayor, and auditor to compel the payment by the city of a condemnation award previously entered in favor of the landowner. *Id.* at 787–88. The writ ordered the city council to pass a proper appropriation ordinance, ordered the mayor to sign it, and ordered the auditor to issue warrants in payment of just compensation. *Id.* at 788. This remedy was indeed extraordinary, but justified because:

> [i]t would manifestly be unfair and unjust to subject the owner of property to the extraordinary power of eminent domain without ever terminating the period during which the petitioner in the eminent domain proceedings may continue supinely to refrain from his election whether to pay for the property or not. When is that period to be deemed at an end?

Id. at 787.

The Sewerage & Water Board is not alone in its reluctance to remit just compensation, and courts uniformly hold that such reluctance when it extends too long—as here—cannot be countenanced. For example, the Kentucky Court of Appeals

held that when just compensation is withheld from property owners by "the non-action of some merely executive or ministerial officer who refuses or fails to discharge his official duties in the premises, they are entitled to resort to the most summary remedies provided by law to enforce the payment of the amount adjudged to them by way of such compensation." *Duncan*, 71 Ky. at 106–07. Specifically, property owners of just compensation judgments are "clearly entitled" to a writ of mandamus demanding the government's "obedience" to the constitutional command. *Id*. The Massachusetts Supreme Judicial Court would authorize a writ of mandamus when the Legislature's delay in appropriating funds to pay just compensation "degenerated from 'when' to 'if.'" *Bromfield v. Treasurer & Receiver General*, 459 N.E.2d 445, 448 n.8 (Mass. 1983).

"The right to just compensation shouldn't depend on any statute—the Constitution requires it." *O'Connor v. Eubanks*, 83 F.4th 1018, 1029 (6th Cir. 2023) (Thapar, J., concurring) (citing *Jacobs*, 290 U.S. at 16 ("Statutory recognition was not necessary .... The suits were thus founded upon the Constitution ...."). Here, the owners of damaged and taken property properly pursued their constitutional right to just compensation and obtained state court judgments awarding them the cash value of the taken and damaged property. And then, nothing. For over five years, nothing. Failure by the Sewerage Board to pay this lawfully ordered just compensation violates the federal and state constitutions and this Court must order remittance.

II. SUCCESSFUL INVERSE CONDEMNATION CLAIMANTS HAVE RIGHTS IDENTICAL TO PROPERTY OWNERS WHOSE PROPERTY IS TAKEN BY EMINENT DOMAIN

Eminent domain is equivalent to inverse condemnation. The only difference between them is whether the government acknowledges its duty to pay for taking or damaging property and initiates the lawsuit; or whether the government denies its duty and forces the property owner to initiate the lawsuit. *See City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687, 717 (1999) ("When the government repudiates [its just compensation] duty, either by denying just compensation in fact or by refusing to provide procedures through which compensation may be sought, it violates the Constitution."); *Cobb v. S.C. Dep't of Transp.*, 365 S.C. 360, 365 (2005) (noting "historical treatment of an inverse condemnation action as equivalent to an eminent domain case"); *Clark Cnty. v. Alper*, 100 Nev. 382, 391 (1984) (same); *Bristol v. Tilcon Minerals, Inc.*, 284 Conn. 55, 83 (2007) (same).

Whatever minor distinctions may exist between the two types of lawsuits the rules governing eminent domain and inverse condemnation actions must "not yield different results in terms of compensation." *Weiss v. People ex rel. Dep't of Transp.*, 9 Cal. 5th 840, 857–58 (2020) (citation omitted). Whether the amount of just compensation is determined in an eminent domain valuation trial or an inverse condemnation lawsuit makes no difference as to the property owner's right to be paid the amount of the resulting judgment. *Jacobs*, 290 U.S. at 16–17 ("The fact that condemnation proceedings were not instituted and that the right was asserted in

suits by the owners did not change the essential nature of the claim. The form of the remedy did not qualify the right.").

The rules for when payment must be made in inverse condemnation cases therefore must echo the rules for eminent domain. *See, e.g.*, *Ossman v. Mountain States Tel. & Tel. Co.*, 184 Colo. 360, 365 (1974) (inverse condemnation actions are tried "as if it were an eminent domain proceeding"); *Pope v. Overton*, 376 S.W.3d 400, 404 (Ark. 2011) ("[T]the same measure of damages is used whether the proceeding is an eminent domain action filed by the utility or an inverse condemnation action filed by the landowner."); *Byrnes v. Johnson Cnty. Comm'rs*, 455 P.3d 693, 700 (Wyo. 2020) (same). The government need not pay compensation in advance of a taking—an impossibility in the case of a "damaging,"—or even contemporaneous compensation. *Crozier v. Fried. Krupp Aktiengesellschaft*, 224 U.S. 290, 306 (1912). Government must, however, mandate payment of compensation without unreasonable delay with an "adequate provision for enforcing the pledge" to pay. *Joslin*, 262 U.S. at 677; *Hays v. Port of Seattle*, 251 U.S. 233, 238 (1920). This obligation to compensate within a reasonable time is not an "empty formality, subject to modification at the government's pleasure." *Cedar Point*, 594 U.S. at 158. The Supreme Court has never afforded condemnors unlimited and unreviewable discretion to decide when to pay after a taking.

Instead, the rule common to both types of lawsuits is that just compensation must be paid without unreasonable delay. *Sweet*, 159 U.S. at 401. The Supreme Court

first discussed the requirement for reasonably timely compensation in *Sweet v. Rechel*, holding that "[p]ayment need not precede the seizure, but the means for securing indemnity must be such that the owner will be put to no risk of unreasonable delay." 159 U.S. at 401 (quoting *Haverhill Bridge Proprietors v. Essex Cnty. Comm'rs*, 103 Mass. 120, 123–24 (1869)). Two decades later, the Court confirmed that "where adequate provision is made for the certain payment of the compensation without unreasonable delay the taking does not contravene due process of law in the sense of the Fourteenth Amendment merely because it precedes the ascertainment of what compensation is just." *Bragg v. Weaver*, 251 U.S. 57, 62 (1919) (citing *Branson v. Gee*, 36 P. 527, 529 (Or. 1894) (pre-condemnation compensation unnecessary because courts may enforce judgment post-condemnation).

The Supreme Court reaffirmed the "reasonably prompt" compensation principle the following year, holding that a statute's requirement of giving security for costs "constitutes an adequate provision for assured payment of any compensation due to complainant without unreasonable delay[,]" which is necessary to satisfy due process of law. *Hays*, 251 U.S. at 238. Three years later, the Court again confirmed that the government must offer adequate provision for enforcing the pledge to pay just compensation after a taking: "[T]he requirement of just compensation is satisfied when the public faith and credit are pledged to a *reasonably prompt* ascertainment and *payment*, and there is adequate provision for enforcing the pledge." *Joslin*, 262 U.S. at 677 (citations omitted, emphasis added). Thus, it is not sufficient for

compensation to be adjudicated ("ascertained") and ordered ("pledged"). There must also be an "adequate provision for *enforcing* the pledge." *Id.* (emphasis added). The statute challenged in *Joslin* provided that "[a]s an additional guaranty that the judgment obtained will be paid," "the owner under the statute may have execution issued against the city." *Id.* at 677–78. The Court concluded that "[t]hese provisions adequately fulfill the requirement in respect of the ascertainment and payment of just compensation[.]" *Id.* In short, the feature that saves an expropriation in which compensation is not provided at or before the taking is the guarantee of actual payment "without unreasonable delay" after the taking. *See United States v. Klamath & Moadoc Tribes*, 304 U.S. 119, 123 (1938) ("The established rule is that the taking of property by the United States in the exertion of its power of eminent domain implies a promise to pay just compensation … to produce the full equivalent of that value paid contemporaneously with the taking.") (citation omitted).

"'The Constitution deals with substance,' not strategies." *Federal Bureau of Investigation v. Fikre*, 144 S. Ct. 771, 777 (2024) (quoting *Cummings v. Missouri*, 71 U.S. (4 Wall.) 277, 325 (1867)). The Sewerage & Water Board's withholding compensation for years after it finished the project is not the "turning of square corners" anyone expects of their government. *See Niz-Chavez v. Garland*, 141 S. Ct. 1474, 1486 (2021) ("If men must turn square corners when they deal with the government, it cannot be too much to expect the government to turn square corners when it deals with them."); *F.M.C. Stores Co. v. Borough of Morris Plains*, 495 A.2d

1313, 1317–18 (N.J. 1985) ("[I]n the condemnation field, government has an overriding obligation to deal forthrightly and fairly with property owners."). The property owners' land and buildings were taken and damaged, and they obtained judgments of just compensation that reflect the value of their taken and damaged property. Louisiana courts are not only able, but required by the U.S. Constitution's Fifth Amendment, to order the government to comply with the constitutional mandate to pay just compensation.

III. THE SKY WILL NOT FALL

The Sewerage Board's brief and Attorney General's amicus brief sound the alarm of "los[ing] complete control of their budgets," "budgetary bedlam," destruction of the separation of powers, "chaos," and the "open[ing] the floodgates for myriad claims." *See* Sewerage Bd. Brf. at 2, 16, 24; Attorney General Amicus Br. at 1, 2, 5. This hyperbole derives from Louisiana's appalling refusal to pay just compensation so frequently that it now claims its budgets *depend* upon depriving property owners of their constitutionally mandated remedy.

Virtually all states have balanced budget requirements. Nat'l Ass'n of State Budget Officers, *Budget Processes in the States* 48 (2021) (49 states have a constitutional or statutory requirement to balance their operating budget).[3] These

[3] https://higherlogicdownload.s3.amazonaws.com/NASBO/9d2d2db1-c943-4f1b-b750-0fca152d64c2/UploadedImages/Budget%20Processess/NASBO_2021_Budget_Processes_in_the_States_S.pdf.

states nonetheless manage to pay just compensation for taken property as a matter of course. And the Attorney General's posturing that public works projects may be cancelled, or employees fired to come up with the money to pay omits the most obvious way that governments fund building and maintenance of infrastructure: raise taxes. *See, e.g.*, *Balch*, 109 Mich. at 256 (ordering government to levy taxes to raise funds if no money was otherwise available to pay just compensation). In so doing, the government complies with the principle underlying the constitutional requirement of just compensation "to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

That raising taxes may be politically unpalatable cannot alter the constitutional command. Justice Holmes anticipated the government's argument more than 100 years ago, noting the "danger of forgetting that a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change." *Pa. Coal Co. v. Mahon*, 260 U.S. 393, 416 (1922). This remains true in the 21st Century. Justice Ginsburg rebuked governments' repeated attempts to generate judicial sympathy for their failure to pay just compensation: "Time and again in Takings Clause cases, the Court has heard the prophecy that recognizing a just compensation claim would unduly impede the government's ability to act in the public interest." *Arkansas Game & Fish Comm'n v. United States*, 568 U.S. 23, 36–37 (2012). "The sky did not fall" in

those cases, *id.*, and it will not fall in this case by holding the government accountable to the Constitution.

CONCLUSION

The decision below should be affirmed.

DATED: April 26, 2024.

Respectfully submitted,

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DATED: April 26, 2024.

/s/ Sarah R. Harbison
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CERTIFICATE OF SERVICE

I hereby certify that on April 26, 2024, I electronically filed the foregoing with the Clerk of the Court by using the Louisiana Supreme Court E-Filing system. All counsel are registered users and will be served by the e-filing system.

/s/ Sarah R. Harbison
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