No.

In the Supreme Court of the United States

BAS, LLC,

Petitioner,

v.

TOMMY LAND, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF STATE LANDS FOR THE STATE OF ARKANSAS,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court Of Arkansas

PETITION FOR A WRIT OF CERTIORARI

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QUESTION PRESENTED

To collect an unpaid $9,897.88 property tax bill, the Arkansas Commissioner of State Lands foreclosed and auctioned an office building and land owned by BAS worth over $1,500,000. To avoid violating the Fifth Amendment for an unconstitutional taking, the Commissioner was obligated to return the equity to BAS. *Tyler v. Hennepin County*, 598 U.S. 631 (2023). When the Commissioner did not do so, BAS sued in an Arkansas court for a *de facto* taking. The Arkansas Supreme Court, however, categorically barred BAS's federal takings claim because the Commissioner had not waived sovereign immunity under the Arkansas Constitution.

The question presented is:

Does a state's Fifth and Fourteenth Amendment obligation to pay just compensation waive sovereign immunity when it takes private property?

PARTIES TO THE PROCEEDING AND RULE 29.6 STATEMENT

Petitioner BAS, LLC, was plaintiff-appellee in all proceedings below. Petitioner BAS, LLC, is a limited liability company that has no parent corporation and no stock.

Respondent Tommy Land, Commissioner of State Lands, is an elected constitutional officer of the State of Arkansas, defendant-appellant below.

STATEMENT OF RELATED CASES

These proceedings are directly related to the above-captioned case under Rule 14.1(b)(iii):

BAS, LLC v. Land, No. 28CV-22-388 (Ark. Cir. Ct. Sep. 5, 2025)

Land v. BAS, LLC, No. CV-24-645, 713 S.W.3d 1 (Ark. June 5, 2025)

BAS, LLC v. Land, No. 3:25-cv-00224-BSM (E.D. Ark. 2025)

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PETITION FOR A WRIT OF CERTIORARI

BAS, LLC, respectfully petitions for a writ of certiorari to review the judgment of the Supreme Court of Arkansas.

OPINIONS BELOW

The opinion of the Arkansas Supreme Court is reported at 713 S.W.3d 1 (Ark. June 5, 2025) and reprinted at App. 1a. The order denying rehearing is reprinted at App. 29a.

JURISDICTION

This case arises under the Fifth and Fourteenth Amendments to the United States Constitution. Petitioner brought a claim for just compensation under the Fifth and Fourteenth Amendments against Respondent, an Arkansas official sued in his official capacity, in state court. The Arkansas Circuit Court rejected Respondent's claim of sovereign immunity. Respondent appealed to the Arkansas Supreme Court, which held that Respondent enjoyed sovereign immunity under the Arkansas Constitution from Petitioner's federal constitutional claims. App. 1a-24a. That court denied rehearing on September 4, 2025. App. 29a. This Court granted an extension to file this Petition until February 1, 2026.

The Court has jurisdiction under 28 U.S.C. § 1257. *See Cox Broadcasting Corp. v. Cohn*, 420 U.S. 469, 479 (1975) (holding that 28 U.S.C. § 1257 allows jurisdiction in this Court when "the case is for all practical purposes concluded, [so] the judgment of the state court on the federal issue is deemed final").

CONSTITUTIONAL PROVISIONS AT ISSUE

The Supremacy Clause of the U.S. Constitution provides, "[t]his Constitution, and the Laws of the United States which shall be made in Pursuance thereof; and all Treaties made, or which shall be made, under the Authority of the United States, shall be the supreme Law of the Land; and the Judges in every State shall be bound thereby, any thing in the Constitution or Laws of any State to the Contrary notwithstanding."

The Fifth Amendment to the U.S. Constitution provides, in relevant part, "nor shall private property be taken for public use, without just compensation."

Section 1 of the Fourteenth Amendment to the U.S. Constitution provides in pertinent part, "No state shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any state deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws."

INTRODUCTION AND SUMMARY OF REASONS FOR GRANTING THE PETITION

After the Commissioner sold BAS's property to satisfy a tax debt but failed to return the equity, BAS sued for a *Tyler* taking. *See Tyler*, 598 U.S. at 642 ("[A] taxpayer is entitled to the surplus in excess of the debt owed."). The Arkansas Supreme Court held the Commissioner enjoys sovereign immunity from BAS's federal constitutional claim. This petition is the latest presenting an unresolved and lingering question, as it highlights the "tension" between the government's general immunity from civil claims, and the self-executing obligation to provide just compensation

when the government has taken private property. *See*, *e.g.*, *Zito v. N.C. Coastal Res. Comm'n*, 8 F.4th 281, 290 (4th Cir. 2021).

Although sovereign immunity may generally bar claims against the government, since the beginning of the Republic, this power has been conditioned on an implicit agreement to pay compensation when taking private property. As explained by Chancellor Kent,

> A provision for compensation is a necessary attendant on the due and constitutional exercise of the power of the lawgiver to deprive an individual of his property without his consent; and this principle in American constitutional jurisprudence, is founded in natural equity, and is laid down by jurists, as an acknowledged principle of universal law.

2 James Kent, *Commentaries on American Law* 144 (1827); *United States v. Great Falls Mfg. Co.*, 112 U.S. 645, 661 (1884) (takings clauses reflect the preexisting understanding that the sovereign's power to take property includes a promise to pay compensation); *Young v. McKenzie*, 3 Ga. 31, 41–42 (1847) (observing that the just compensation requirement for a taking does not "do anything more than declare a great common-law principle, applicable to *all governments*, both state and federal, which has existed from the time of *Magna Charta*") (emphasis added).

Adoption of the Fourteenth Amendment expressly recognized the Fifth Amendment's check on sovereign power limits states and their instrumentalities. *Chicago, Burlington & Quincy R.R. Co. v. City of Chicago*, 166 U.S. 226, 235-41 (1897). This Court recognizes that the "self-executing" nature of this obligation, which needs no additional government action, and

that a property owner may sue if her property has been *de facto* taken, but the government has not provided compensation. *First English Evangelical Lutheran Church v. Los Angeles Cnty.*, 482 U.S. 304, 315 (1987); *Knick v. Twp. of Scott*, 588 U.S. 180, 190-91 (2019). Immunizing a state from a federal takings claim is incompatible with these principles and their history because the very act of taking property waives a state's sovereign immunity from a claim for just compensation. *See PennEast Pipeline Co., LLC v. New Jersey*, 594 U.S. 482, 500 (2021) (The "'plan of the Convention' includes certain waivers of sovereign immunity to which all States implicitly consented at the founding."). Yet the Arkansas Supreme Court concluded that the Commissioner, as an agent of the sovereign, enjoys immunity from BAS's *Tyler* takings claim. App. 12a-13a.

This Court has yet to directly resolve the conflict between the right to judicial relief for a *de facto* taking, and sovereign immunity. *See* Richard H. Seamon, *The Asymmetry of State Sovereign Immunity*, 76 Wash. L. Rev. 1067, 1067-68 (2001) ("The principles of sovereign immunity and just compensation are on a collision course . . . [and] the Supreme Court has never answered that question."); Eric Berger, *The Collision of the Takings and State Sovereign Immunity Doctrines*, 63 Wash. & Lee L. Rev. 493, 496 (2006) (the Court has "avoided the issue"); *Cmty. Hous. Improvement Program v. City of N.Y.*, 492 F. Supp. 3d 33, 40 (E.D.N.Y. 2020) (noting the Court has not "decisively resolved the conflict"). It should do so now by granting the Petition and holding that states are not immune in their own courts from claims of unconstitutional takings. *Bay Point Props., Inc. v. Mississippi Transp.*

Comm'n, 937 F.3d 454, 456 n.1 (5th Cir. 2019) (acknowledging that "'the tension' between state sovereign immunity and the right to just compensation . . . is [an issue] for the Supreme Court").

STATEMENT OF THE CASE

A. Facts

In 2009, Barbara Arlene Solnit's health was failing. Her sons, Drs. Gary and Jay Solnit, were heavily involved in her care and were granted power of attorney for her. Depo. Tr. of Dr. Gary Solnit (App. 45a).

Gary and Jay decided to invest the wealth she had saved up for years as a way to provide a steady stream of income for her health needs and her care. *Ibid.* In 2016, they formed BAS, LLC—an acronym for their mother's name—in order to purchase property containing a Dollar General store in Paragould, Arkansas. *Id.* at 47a.

At the time BAS purchased the property, the closing agent mistakenly recorded Gary's home address in California, where he was renting, as the address of record for the buyer on the title. *Ibid.* When Gary noticed this mistake, he emailed his lawyer to have it corrected. *Ibid.* Despite that, it was not corrected, and the property tax statements were sent to that address in 2017 and 2018. While Gary was still living there in 2017, a property tax statement was sent to his home address. *Id.* at 46a. He subsequently sent an email to his lawyer asking for help in determining whether BAS was responsible for the property taxes or whether Dollar General had to pay them under the lease between Dollar General and BAS. *Ibid.* Gary never followed up on this email, as he moved from that

address soon after, and when the property tax statement was sent to his old address thereafter, BAS never received it. *Ibid.*

In 2021 the property was certified to the Commissioner for non-payment of taxes for the years 2017 and 2018. App 2a. The Commissioner subsequently conducted a Records and Lien Search Request for the property, which revealed BAS as the record owner of the property and that BAS's address was 3735 Winford Drive, Tarzana, California, 91356, Gary's old rental address. *Ibid.*

On August 17, 2021, the Commissioner sent a notice of delinquency and future tax sale to BAS at the Winford address. *Ibid.* The notice stated that the property would be sold on August 2, 2022, if BAS failed to pay the taxes it owed on the property. *Ibid.*

Despite being sent by certified mail with a return receipt requested, the Commissioner never received a return receipt for the notice. *Ibid.* USPS tracking data showed that it was delivered to a front desk, reception area, or mail room at the Tarzana address, despite that address not having such rooms. *Ibid.*

The Commissioner sent a notice of delinquency to the property's physical address in Paragould, Arkansas, which was returned to sender as undelivered. *Ibid.* Neither Gary nor Jay, nor anybody representing BAS, received the notice of delinquency.[1]

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[1] BAS also brought a due process claim under the Fourteenth Amendment in the state proceedings below. This petition does not present a question as to that claim.

The Commissioner sold BAS's property to third parties on August 2, 2022 for less than 3% of its fair market value.[2] App. 37a. The Commissioner subsequently executed a limited warranty deed in favor of those parties. App. 34a.

B. Procedural History

In October 2020, BAS sued the Commissioner in the Circuit Court of Greene County, Arkansas. BAS amended its complaint on March 6, 2024. App. 28a. The Amended Complaint asserted a due process violation related to the lack of notice, and a Fifth and Fourteenth Amendment takings claim. App. 36a-38a. BAS's takings claim sought just compensation, declaratory relief, and an order setting aside the tax sale. App. 35a-38a.

The Commissioner moved for summary judgment, arguing in part that the state's sovereign immunity, recognized by the Arkansas Constitution, barred BAS's claims. App. 24a. *See* Ark. Const. art. 5, § 20 ("The State of Arkansas shall never be made defendant in any of her courts."). The Arkansas Supreme Court has recognized a limited exception to this seemingly categorical language: the state cannot claim sovereign immunity if it has acted unconstitutionally. App. 5a. The circuit court denied the Commissioner's

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[2] The property was purchased at auction for $26,654.78. *See* Limited Warranty Deed, Ex. 11 to First Amended Complaint, No. 28CV-22-388 (Ark. Cir. Ct. Mar. 6, 2024). The fair market value of the property is estimated to be worth more than $1,000,000. *See* Commissioner of State Land Records and Lien Search Request, Ex. 2 to First Amended Complaint, No. 28CV-22-388 (Ark. Cir. Ct. Mar. 6, 2024) (showing a 2016 estimated sale price of $1,313,000).

claim for immunity, concluding that that BAS had sufficiently alleged it met the exception for an unconstitutional act. App. 25a-26a.

The Commissioner appealed.[3] The fractured Arkansas Supreme Court reversed 5-1-2,with the majority holding that BAS's federal takings claim was barred by the State's sovereign immunity because BAS had not shown a taking occurred.

The majority recognized (as it must) that in *Tyler* this Court held the Fifth Amendment forbids government from keeping excess equity after a valid tax sale, *See* App. at 12a-13a ("[T]ax sales represent a 'mandated 'contribution from individuals . . . for the support of the government . . . for which they receive compensation in the protection which government affords.'") (quoting *Tyler*, 598 U.S. at 637). The majority also recognized that lawsuits for declaratory or injunctive relief against state officials who commit "ultra vires, unconstitutional, or illegal acts," are not subject to claims of sovereign immunity. App. 18a (citation omitted). But the majority viewed BAS's federal takings claim solely as a reframed due process challenge. *See* App. 12a ("BAS's takings claims rely on the argument that—under *Jones* [*v. Flowers*, 547 U.S. 220 (2006)]—a tax sale without proper notice constitutes a taking under both the Fifth Amendment and the Arkansas Constitution."). The majority concluded that because the forfeiture and sale process was not unfair,

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[3] Arkansas treats rulings on sovereign immunity as meriting appellate review separate from the merits of the case. *See* Ark. R. App. P.–Civ. 2(a)(10) (allowing immediate appeals of "[a]n order denying a motion to dismiss or for summary judgment based on the defense of sovereign immunity or the immunity of a government official").

BAS "has failed to allege or offer evidence of an unconstitutional or illegal act that would overcome sovereign immunity[,] and granted the Commissioner summary judgment. App. 13a. The majority did not address the *Tyler* takings claims.

The majority also rejected an argument that the Supremacy Clause overrides any state-law immunities. *Ibid.* ("One loose end remains."). The majority recognized that this Court "has recognized narrow exceptions to the general rule—like where '[t]he State have consented' to be sued 'pursuant to the plan of the Convention or to subsequent constitutional Amendment.'" App. 14a (quoting *Alden v. Maine*, 527 U.S. 706, 755 (1999)). But the majority again sidestepped the *Tyler* takings claim and cast the takings claim as merely a challenge to the foreclosure and sale procedures, not the Commissioner's retention of BAS's equity. App. 15a ("And nothing in the federal constitution suggests BAS is entitled to press claims that fail as a matter of federal law.").

Justice Womack dissented, first noting that "[t]his case exemplifies how messy this court's sovereign immunity jurisprudence is." App. 20a.[4] He stated that the original public meaning of the term "never" in article 5, section 20 of the Arkansas Constitution means that—"absent an express constitutional provision to the contrary"—that the State may never be sued in its

[4] Justice Hudson also dissented, focusing on the due process claim. She concluded that "[s]overeign immunity is not applicable when, as here, a plaintiff alleges unconstitutional state action and seeks only injunctive relief, not damages." App. 18a.

own courts.[5] Justice Womack pointed to the Takings Clause of the Arkansas Constitution as the "express constitutional provision to the contrary," noting that "[t]he only true exceptions to article 5 section 20 are those that are found in the Arkansas Constitution or, as explained later, are imposed by the Supreme Court of the United States." App. 21a (citing Ark. Const. art. 2, § 22 ("The right of property is before and higher than any constitutional sanction; and private property shall not be taken, appropriated or damaged for public use, without just compensation therefor.")).

Justice Womack concluded that "[f]or BAS's federal claims, *Haywood v. Drown* prohibits this court from kicking them solely because of sovereign immunity." App. 23a. He wrote:

> In *Haywood*, the Supreme Court held that states cannot "shut the courthouse door to federal claims that [they] consider[] at odds with [their] local policy"—i.e., article 5, section 20. According to the Supreme Court, this "invocation of 'jurisdiction' as a trump" to end federal claims in state

[5] Chief Justice Baker concurred in part and dissented in part. Relying on *Board of Trustees of the University of Arkansas v. Andrews*, 2018 Ark. 12, at 13, 535 S.W.3d 616, 624, she emphasized that, unless and until *Andrews* is overruled, article 5, § 20's "never" forecloses suits against the State—even those seeking declaratory or injunctive relief—so the state-law claims must be dismissed; she would not, however, bar the federal claims on state sovereign-immunity grounds. App. 17a (Baker, C.J., concurring in part and dissenting in part); *see Andrews*, 2018 Ark. at 12 (Baker, J., dissenting) (arguing that the majority's expansive sovereign-immunity reading "leaves the state of law on sovereign immunity in complete disarray" and "effectively revived the antiquated doctrine that 'the king can do no wrong.'").

> court is unconstitutional under the Supremacy Clause. Under a proper reading of article 5, section 20, this is exactly what sovereign immunity does to BAS's federal claims. Because of *Haywood*, Land is not entitled to claim sovereign immunity as a shield from BAS's federal claims at this stage.

Ibid. (quoting *Haywood v. Drown*, 556 U.S. 729, 740 (2009) (footnotes omitted)).

REASONS FOR GRANTING THE PETITION

A general immunity from lawsuits to which the government has not consented is a core attribute of sovereignty. Yet, recognizing that the sovereign's ability to take private property against the owner's will is the harshest civil power government wields, the Anglo-American tradition has always limited this power with a corresponding responsibility—the duty to pay just compensation to those whose property is taken.

These two principles—states' sovereign immunity from damages suits and the individual's right to seek compensation for a taking—function independently in most cases. However, when a property owner seeks compensation for a Fifth Amendment taking of property by a state, the principles are in irreconcilable conflict, and must be harmonized.

In the decision below, the Arkansas Supreme Court subjugated the right to just compensation in favor of the State's sovereign immunity. This decision raises an important and recurring issue. It conflicts with historical understandings about the nature of the sovereign power to take property, and with this Court's jurisprudence.

I.

LOWER COURTS ARE DIVIDED WHETHER SOVEREIGN IMMUNITY IS COMPATIBLE WITH THE TEXTUAL REQUIREMENT OF JUST COMPENSATION

The sovereign immunity doctrine affirms a principle of state sovereignty inherent in the constitutional structure: that states, as sovereigns, are immune from most non-consensual suits, *Hans v. Louisiana*, 134 U.S. 1, 21 (1890), whether a suit is filed in state or federal court. *Alden v. Maine*, 527 U.S. 706, 712, 733, 749 (1999). For as long as this doctrine has existed, however, this Court has recognized exceptions.

For one, state sovereign immunity does not apply when states "have consented" to suit "pursuant to the plan of the [Constitutional] Convention or to subsequent constitutional Amendments." *Alden*, 527 U.S. at 755. Thus, pursuant to Section 5 of the Fourteenth Amendment, Congress can override the state's sovereign immunity when acting to enforce federal civil rights. *Id.* at 755-57. Second, the "'plan of the Convention' includes certain waivers of sovereign immunity to which all States implicitly consented at the founding." *PennEast*, 594 U.S. at 500. Finally, states may waive their immunity from suit by taking voluntary actions inconsistent with a claim of immunity. *Gunter v. Atl. Coast Line R.R. Co.*, 200 U.S. 273, 284 (1906) ("Immunity is a privilege which may be waived; and hence, where a state voluntarily become a party to a cause . . . it will be bound thereby, and cannot escape the result of its own voluntary act by invoking the prohibitions of the 11th Amendment.").

This Court has also recognized that property owners have an express constitutional right to be provided compensation when the government takes property, and to sue to compel payment if the government has not affirmatively done so. *Knick*, 588 U.S. at 192 (holding that property owners have a "claim for just compensation at the time of the taking") (citing *First English Evangelical Lutheran Church of Glendale v. Los Angeles Cnty.*, 482 U.S. 304, 315 (1987)). The plain text of the Constitution provides an owner with a "self-executing" right to seek just compensation when the government has taken property "without just compensation." *First English*, 482 U.S. at 316 n.9 (noting that the Just Compensation Clause, "of its own force, furnish[es] a basis for a court to award money damages against the government." (citation omitted)); *Jacobs v. United States*, 290 U.S. 13, 16 (1933) (holding that claims "based on the right to recover just compensation for property taken" do not require "[s]tatutory recognition" but are "founded upon the Constitution"); *Knick*, 588 U.S. at 191. These principles—that states cannot avoid providing compensation when taking property, but also enjoy sovereign immunity from suits where the remedy is money—exist in an uneasy tension. Vicki C. Jackson, *The Supreme Court, the Eleventh Amendment, and State Sovereign Immunity*, 98 Yale L.J. 1, 116 (1988) ("[The] clarity of this textual provision for a monetary remedy is inconsistent with a premise of sovereign immunity as a constitutional doctrine[.]").

This Court ruled early on that states were not bound by the Fifth Amendment's "just compensation" requirement for a taking. *See Barron v. City of Baltimore*, 32 U.S. (7 Pet.) 243, 247–51 (1833). But any notion that the sole limitation on the states' sovereign

power to take property is a state's own constitution was forever dispelled by the ratification of the Fourteenth Amendment which "'fundamentally altered the balance of state and federal power'" by "requir[ing] the States to surrender a portion of the sovereignty that had been preserved to them by the original Constitution." *Alden*, 527 U.S. at 756 (citation omitted).[6]

The Due Process Clause is particularly relevant to the Fourteenth Amendment's limitation of state power. That Clause prohibits states from "depriv[ing] any person of . . . property, without due process of law." U.S. Const. amend. XIV, § 1. A principal drafter of the Fourteenth Amendment, Representative John Bingham, contended that the amendment was necessary to reverse *Barron*'s holding that states are not limited by the Fifth Amendment's Takings Clause. Cong. Globe, 39th Cong., 1st Sess., 1089-90 (1866); *see also id.* at 1090 ("[T]he people are [now] without remedy. . . . [T]he State Legislatures may by direct violations of their duty and oaths avoid the requirements of the Constitution[.]").

Twenty five years after the Fourteenth Amendment's ratification, this Court held that the Due Process Clause selectively incorporated provisions of the Bill of Rights and limited the sovereignty of the states.

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[6] After the Civil War, secessionist states were required to ratify the Fourteenth Amendment as a condition of readmission to the Union, thus accepting the primacy of the United States Constitution and corresponding reduction in individual state sovereignty. *United States v. States of Louisiana, Texas, Mississippi, Alabama & Florida*, 363 U.S. 1, 125 (1960).

Chicago, B. & Q. R. Co., 166 U.S. at 233-34, 239-41.[7] The first of these rights so incorporated was the Fifth Amendment right to just compensation. *Ibid.* This Court held that states and their instrumentalities are bound to provide just compensation when they take private property. *Ibid.*; *see also Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302, 306 n.1 (2002) (The Just Compensation Clause "applies to the States as well as the Federal Government.").[8] With this extension of the Takings Clause to the states, "[t]he principles of sovereign immunity and just compensation [were set] on a collision course." *See* Seamon, *supra*; *see also* Berger, *supra.*

The tension between the states' sovereign immunity and their obligation to provide just compensation for a taking has become increasingly important as states have taken a more active role in the regulation

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[7] Other Justices since have stated that the Privileges or Immunities Clause, rather than the Due Process Clause, is a better vehicle to incorporate rights against the states. *See McDonald v. City of Chicago*, 561 U.S. 742, 805–06 (2010) (Thomas, J., concurring in part and concurring in the judgment) (advocating incorporation via Privileges or Immunities); *Timbs v. Indiana*, 586 U.S. 146, 157 (2019) (Thomas, J., concurring in the judgment); *ibid.* (Gorsuch, J., concurring) (noting that the Privileges or Immunities Clause "may well" be the proper vehicle for incorporation); *see also The Slaughter-House Cases*, 83 U.S. 36, 96-129 (1873) (Field, J., dissenting, joined by Chase, C.J., Swayne & Bradley, JJ.) (urging a broad reading of Privileges or Immunities), and *Saenz v. Roe*, 526 U.S. 489, 522, 527 (1999) (Thomas, J., dissenting) (calling for reconsideration of *Slaughter-House*).

[8] *See also Dolan v. City of Tigard*, 512 U.S. 374, 383 (1994); *Penn Central Transp. Co. v. New York City*, 438 U.S. 104, 122 (1978); *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825, 827 (1987); *Stop the Beach Renourishment, Inc. v. Fla. Dep't of Env't Prot.*, 560 U.S. 702, 717 (2010).

of private property. In the modern era, state entities, rather than local ones, are often the source of property rules and conditions that unconstitutionally take property rights. *See, e.g.*, *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021) (takings challenge to state agency's property access regulation); *Brown v. Legal Found. of Wash.*, 538 U.S. 216 (2003) (takings challenge to state rule requiring confiscation of interest on lawyer funds).

Yet, when property owners challenge a state taking of property in federal court (or even, as here, in the state's own courts), states are quick to assert that sovereign immunity prevents accountability. This occurs even in cases involving classic unconstitutional takings that should be quickly resolved in favor of an award of compensation.

Some courts accept the sovereign immunity argument. *See, e.g.*, *EEE Minerals, LLC v. North Dakota*, 81 F.4th 809 (8th Cir. 2023) (sovereign immunity barred a claim after the state legislatively redefined private mineral interests as public property); *O'Connor v. Eubanks*, 83 F.4th 1018, 1024 (6th Cir. 2023) (sovereign immunity barred a takings claim challenging state officials' confiscation of interest); *Zito*, 8 F.4th at 290 (dismissing, on sovereign immunity grounds, a claim that a state's refusal to allow construction of a home prevented all economic use of land and caused a taking)*; Ladd v. Marchbanks*, 971 F.3d 574, 576 (6th Cir. 2020) (sovereign immunity barred a claim in federal court seeking compensation after state construction activities "flooded Plaintiffs' properties three times and caused significant damage"); *Citadel Corp. v. Puerto Rico Highway Auth.*, 695 F.2d 31, 33 n.4 (1st Cir. 1982) (sovereign immunity barred a claim that a property owner was owed

compensation for a decades-long state "freeze" on development).

Other courts, however, expressly reject the idea that sovereign immunity insulates governments from federal constitutional takings claims. In *Fulton v. Fulton Cnty. Bd. of Comm'rs*, 148 F.4th 1224, 1261 (11th Cir. 2025), for example, the court held that "sovereign immunity can't undermine a cause of action that the Constitution expressly makes a right." (citing *PennEast*, 594 U.S. at 508). The waiver of sovereign immunity is in the structure of the Constitution. The Eleventh Circuit continued:

> That's why the Supreme Court has been clear that when "there [is] no remedy by which [a] plaintiff could have recovered compensation for [a] taking . . . ," he may at least sue to recover his taken property under a "constitutional exception to the doctrine of sovereign immunity . . ." *Malone v. Bowdoin*, 369 U.S. 643, 647-48 (1962) (quoting *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 696-97 (1949)) (internal quotation marks omitted); *see also First English*, 482 U.S. at 316 n.9 (rejecting arguments that "principles of sovereign immunity" prevent recognition that the Fifth Amendment is a "remedial provision"); *United States v. Lee*, 106 U.S. 196, 221 (1882) (asserting if the government can defeat a takings claim by invoking sovereign immunity "it sanctions a tyranny which has no existence in the monarchies of Europe, nor in any other government which has a just claim to well-regulated liberty and the protection of personal rights").

Id. at 1262. Arkansas has added to this conflict by concluding that the Commissioner is immune from a federal constitutional takings claim, even in *state* court. But the Eleventh Circuit understood it correctly when it rejected the conclusion that any part of our government can claim sovereign immunity from a duty to provide compensation when that duty is expressly recognized in the Constitution:

> Our Founders did not do to us what the Greek gods did to Tantalus. Our Constitution explicitly promises exactly two remedies: "just compensation" if the government takes our property, and the writ of habeas corpus if it tries to take our lives or liberty. And the Constitution delivers directly on each. It doesn't taunt us by naming these remedies but then holding them out of reach, depending on the whims of the legislature.
>
> So even if Congress doesn't legislate a procedure by which a person can obtain one of these remedies, the Constitution's promise is not illusory. A person can bring a case directly invoking either constitutional remedy.

Id. at 1232.

This Court should resolve the conflict to make clear that no sovereign has immunity from an owner's claim that it has taken private property without just compensation.

II.

THE DECISION BELOW CONFLICTS WITH COMMON-LAW UNDERSTANDINGS, AND THIS COURT'S PRECEDENT

The Arkansas Supreme Court's conclusion that the Commissioner is immune from BAS's federal claim

that the Commissioner violated the Fifth Amendment as a result of the tax sale and failure to disgorge BAS's equity is incompatible with the conditional nature of the state's power to take property, and this Court's precedent.

A. The decision below conflicts with historical common-law understandings about the limited, conditional nature of the sovereign power to take property

Since the beginning of the Anglo-American legal tradition, it has been understood that the sovereign has the power to press private property into public service. *See In The Case of the King's Prerogative in Salt-peter*, 12 Coke R. 13, C2 (1606) (The ability to take property for the sovereign's use "is an Incident inseparable to the Crown, and cannot be granted, demised, or transferred to any other, but ought to be taken only by the Ministers of the King[.]"). At the same time, the common law has long recognized that use of the sovereign power to take property is conditioned upon provision of compensation. *Id.* at C1 (concluding that the king's ministers "are bound to leave the Inheritance of the Subject in so good Plight as they found it").

In 1625, the legal scholar Grotius stated:

> "the property of subjects is under the eminent domain of the State, so that the State or he who acts for it may use and even alienate and destroy such property . . . . But it is to be added that *when this is done the State is bound to make good the loss to those who lose their property*."

Philip Nichols, *The Power of Eminent Domain* 8, § 7 (1909) (quoting Hugo Grotius, *De Jure Belli et Pacis*

(*On the Law of War and Peace*), lib. ii, e. 20 (1625) (emphasis added)). Blackstone made similar comments when examining the sovereign's power in post-Magna Carta England, stating that the legislature can "compel the individual to acquiesce," to a taking, though "[n]ot by absolutely stripping the subject of his property in an arbitrary manner; but *by giving a full indemnification* and equivalent for the injury thereby sustained." 1 William Blackstone, *Commentaries on the Laws of England* 139 (1753) (emphasis added). For a more modern example of the longstanding and traditional common-law approach, *see Attorney-General v. De Keyser's Royal Hotel, Ltd.*, [1920] AC 508. There, the House of Lords concluded the hotel was entitled to compensation for the Royal Flying Corps's use of the premises during World War I. The Lords rejected the Crown's claim that the royal prerogative exempted it from providing compensation for the military's expropriation, use, and occupancy of the hotel, even though the Crown had wide latitude to take property and determine how much property was necessary for the defense of the realm. As Lord Moulton noted, the Crown "has unrestricted power of selection of the necessary lands, buildings, etc., to be taken. It contemplates in the first instance voluntary purchase, but, if that cannot be arranged, then the lands, etc., may be acquired compulsorily subject to certain certificates being obtained as to the necessity or expediency of the acquisition or in the case of actual invasion. I am satisfied that it enables the Crown to acquire either the property or the possession or use of it as it may be need." *Id.* at 550-51. But that in no way limited the owner's right to pursue compensation in the courts. As Lord Moulton wrote, "In all cases compensation is to be paid by the Crown, the amount to be

settled by a jury." *Id.* at 551. The requirement to provide compensation "is a consequence of the taking, but in no way restricts it[.]" *Ibid.*

By the time of the American founding, it was firmly established that the sovereign power of eminent domain was connected to the duty to pay just compensation to affected property owners. Such payment was viewed as a "necessary attendant on the due and constitutional exercise of the power of the lawgiver, to deprive an individual of his property without his consent." 2 Kent, *Commentaries* at 144. As an early state court decision explained, it was

> a settled principle of universal law, that the right to compensation, *is an incident to the exercise of that power* [of eminent domain]: that the one is so inseparably connected with the other, that they may be said to exist not as separate and distinct principles, but as parts of one and the same principle.

Sinnickson v. Johnson, 17 N.J.L. 129, 145 (1839) (emphasis added); *see also Cairo & Fulton R.R. Co. v. Turner*, 31 Ark. 494, 500 (1876) ("The duty to make compensation . . . is regarded, by most enlightened jurists, as founded in the fundamental principles of natural right and justice, and as lying at the basis of all wise and just government, independent of all written constitutions or positive law.").

Early courts and commentators considered the act of taking property to include an implied promise and agreement on the part of the government to compensate the owner. *Great Falls Mfg. Co.*, 112 U.S. at 656 ("The law will imply a promise to make the required compensation, where property, to which the government asserts no title, is taken[.]"); *Yearsley v. W.A.*

Ross Constr. Co., 309 U.S. 18, 21 (1940) ("[I]f the authorized action in this instance 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[.]"); *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 be sure, the power to appropriate property was often viewed simply as a power to compel a *sale* of property to the government. Thomas M. Cooley, *A Treatise on the Constitutional Limitations* 559 (4th ed. 1878) (The power is "in the nature of a payment for a compulsory purchase."); Henry E. Mills & Augustus L. Abbott, *Mills on the Law of Eminent Domain*, § 1, p. 6 (2d ed. 1888) (the power to take property is "in the nature of a compulsory purchase of the property of a citizen for the purpose of applying to public use").

This view itself rests on the understanding that a taking carries a sovereign obligation, and a concomitant implied promise, to pay for the property. *Great Falls Mfg. Co.*, 112 U.S. at 656 ("The law will imply a promise to make the required compensation, where property, to which the government asserts no title, is taken[.]"); *Yearsley*, 309 U.S. at 21 ("[I]f the authorized action in this instance 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[.]").[9]

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[9] If the government did not fulfill the implied promise to pay compensation when taking property, the use of the power to take

The adoption of the Fifth Amendment to the Constitution enshrined the preexisting common-law understanding that use of the sovereign power to take property is contingent on a promise to pay compensation. 3 Story, *Commentaries* 661 (The Fifth Amendment "is an *affirmance* of a great doctrine, *established by the common law for the protection of private property*. It is founded in natural equity, and is laid down by jurists as a principle of universal law." (emphasis added)); *Young*, 3 Ga. at 44 ("[The Just Compensation Clause] does not create or declare any *new principle of restriction*, either upon the legislation of the National or State government, but simply recognized the existence of a great common-law principle, founded in natural justice, especially applicable to all republican governments, and which derived no additional force, as a *principle*, from being incorporated into the Constitution of the United States.").

While the states were not bound by the Fifth Amendment at the time of its adoption, they were subject to the preexisting, underlying common-law principle that a taking of property comes with a promise to compensate. *Johnson*, 17 N.J.L. at 146; *Cairo & Fulton R.R. Co.*, 31 Ark. at 494.

The Arkansas Supreme Court's conclusion that the Commissioner is immune from a federal claim for just compensation simply cannot be reconciled with these founding-era understandings about the conditional nature of the power to take property. *Cf. Howell v. Miller*, 91 F. 129, 136 (6th Cir. 1898) ("A state cannot

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property was considered illegitimate and void. Nichols, *The Power of Eminent Domain* at 304, § 261 ("An act which contains no sufficient provision for compensation may be treated by the landowner as void[.]").

authorize its agents to violate a citizen's right of property, and then invoke the constitution of the United States to protect those agents against suit instituted by the owner for the protection of his rights against injury by such agents."). More precisely, the lower court's conclusion is incompatible with the historical understanding that the exercise of the sovereign right to take property triggers a duty to compensate the owner. *Great Falls Mfg. Co.*, 112 U.S. at 656. The states have known from the earliest days of the Union that an obligation and promise to pay compensation adheres to the power to confiscate private property. *Rogers v. Bradshaw*, 20 Johns. 735, 745 (N.Y. Ct. Err. 1823) ("This equitable and constitutional title to compensation, undoubtedly, imposes it as an absolute duty upon the legislature to make provision for compensation whenever they authorize an interference with private right.").

Given the compensatory condition (and implied promise to pay) attached to the power to take property, when a state takes property, that *action itself* waives immunity from an owner's claim for compensation. *Gunter*, 200 U.S. at 284 (A state "cannot escape the result of its own voluntary act by invoking the prohibitions of the 11th Amendment."); *PennEast*, 594 U.S. at 500.

B. The decision below conflicts with this Court's Just Compensation precedent

In a long line of decisions culminating in *Knick*, this Court has held that the Just Compensation Clause provides a "self-executing" remedy for a taking. The Clause itself gives property owners a "claim for just compensation at the time of the taking." *Knick*, 588 U.S. at 192 (citing *First English*, 482 U.S. at 315).

Knick confirmed that a federal takings claim premised on the right to compensation is actionable in federal court as well as in state courts. *Id.* at 191-94. This Court's precedents hold that, of its own force, the Fifth Amendment provides property owners with an actionable compensation remedy for a taking in federal court, whether that taking is caused by a state or its subdivisions. *Knick*, 588 U.S. at 193 (affirming that *First English* rejected "the view that 'the Constitution does not, of its own force, furnish a basis for a court to award money damages against the government'" (citing *First English*, 482 U.S. at 316 n.9)). But this important constitutional right is hollow if states can simply invoke sovereign immunity to escape takings claims resting on the right to compensation. *Davis v. Mills*, 194 U.S. 451, 457 (1904) ("Constitutions are intended to preserve practical and substantial rights, not to maintain theories."). The Court should close this loophole, and confirm that a state cannot assert it is immune from the requirements of the Just Compensation Clause.

Moreover, the Court has repeatedly held that states are subject to the Just Compensation Clause through its incorporation in the Due Process Clause of the Fourteenth Amendment. In *Chicago, B. & Q.R. Co.*, this Court stressed that the "prohibitions of the [Fourteenth] amendment refer to all the instrumentalities of the state,—to its legislative, executive, and judicial authorities,—and therefore whoever, by virtue of public position under a state government, deprives another of any right protected by that amendment against deprivation by the state, 'violates the constitutional inhibition.'" 166 U.S. at 233-34 (citation omitted). Turning to the question of a state's due process-based duty to abide by the Fifth Amendment, the

Court stated "it must be that the requirement of due process of law in that [Fourteenth] amendment is applicable to the direct appropriation by the state to public use, and without compensation, of the private property of the citizen." *Id.* at 236. The *Chicago, B. & Q.R. Co.* Court therefore held that

> a judgment of a state court, even if it be authorized by statute, whereby private property is taken for the state or under its direction for public use, without compensation made or secured to the owner, is, upon principle and authority, wanting in the due process of law required by the fourteenth amendment of the constitution of the United States, and the affirmance of such judgment by the highest court of the state is a denial by that state of a right secured to the owner by that instrument.

Id. at 241. *Chicago, B. & Q.R. Co.* thus recognized that, upon adoption of the Due Process Clause, the states' power to take property became subject to the same compensatory condition and duty that animates the Fifth Amendment.

The Arkansas Supreme Court's conclusion that sovereign immunity bars a claim seeking relief from an uncompensated taking conflicts with this Court's conclusion in *Chicago, B. & Q.R. Co.* that a state's refusal to compensate is actionable. *See Chicago, B. & Q.R. Co.*, 166 U.S. at 236; *Vill. of Norwood v. Baker*, 172 U.S. 269, 277 (1898) ("[T]he due process of law prescribed by that amendment requires compensation to be made or secured to the owner when private property is taken by a state, or under its authority, for public use.") (emphasis added); *see also* Nichols, *The*

Power of Eminent Domain § 259, at 302 ("[T]he Fourteenth Amendment throws the protection of the United States courts over an individual whose property is taken by authority of a State without compensation.").

In *First English*, this Court appeared to agree that the states' constitutional duty to provide just compensation negates sovereign immunity. There, the United States argued as amicus that "principles of sovereign immunity" prevented the Court from interpreting the Just Compensation Clause as "a remedial provision." Brief for the United States as Amicus Curiae Supporting Appellee, No. 85-1199, 1986 WL 727420, at *26-30 (U.S. Nov. 4, 1986). But the Court rejected this contention. *First English*, 482 U.S. at 316 n.9. Although this portion of the *First English* opinion does not fully address the sovereign immunity/takings issue, it strongly suggests that the Court did not consider sovereign immunity as a bar to just compensation claims. *See also City of Monterey v. Del Monte Dunes at Monterey*, 526 U.S. 687, 714 (1999) (questioning whether sovereign immunity "retains its vitality" in the context of compensation seeking takings claims); *Lucien v. Johnson*, 61 F.3d 573, 575 (7th Cir. 1995) (stating that *First English* held that "the Constitution requires a state to waive its sovereign immunity to the extent necessary to allow claims to be filed against it for takings of private property for public use"); *see also* Catherine T. Struve, *Turf Struggles: Land, Sovereignty, and Sovereign Immunity*, 37 New Eng. L. Rev. 571, 574 (2003); 1 Laurence H. Tribe, *American Constitutional Law* § 6-38, at 1272 (3d ed. 2000) (observing, based on *First English*, that the Takings Clause "trumps state (as well as federal) sovereign immunity").

This Court has also regularly resolved takings claims against states without concern for sovereign immunity barriers. *See Lucas v. S.C. Coastal Council*, 505 U.S. 1003 (1992); *Tahoe-Sierra*, 535 U.S. 302; *see generally*, *Manning v. N.M. Energy, Minerals, & Natural Res. Dep't*, 144 P.3d 87, 90 (N.M. 2006) (noting the Court "has consistently applied the Takings Clause to the states, and in so doing recognized, at least tacitly, the right of a citizen to sue the state under the Takings Clause"). In *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001), one amicus curiae brief directly raised sovereign immunity as a potential bar to the takings claim, but the Court ignored the argument. *See* Amicus Brief of the Board of County Commissioners of the County of La Plata, Colorado, in Support of Respondents, No. 99-2047, 2001 WL 15620, at *20-21 (U.S. Jan. 3, 2001).

In short, the Arkansas Supreme Court's conclusion that sovereign immunity prevents the court from adjudicating BAS's federal takings claim cannot be squared with this Court's Takings Clause precedents. *Hair v. United States*, 350 F.3d 1253, 1257 (Fed. Cir. 2003) ("[S]overeign immunity does not protect the government from a Fifth Amendment Takings claim because the constitutional mandate is 'self-executing.'"); *Leistiko v. Sec'y of Army*, 922 F. Supp. 66, 73 (N.D. Ohio 1996) ("The Just Compensation Clause, with its self-executing language, waives sovereign immunity because it can fairly be interpreted as mandating compensation by the government for the damage sustained."); Eric Grant, *A Revolutionary View of the Seventh Amendment and the Just Compensation Clause*, 91 Nw. U. L. Rev. 144, 199 (1996) ("It is a proposition too plain to be contested that the Just Compensation

Clause of the Fifth Amendment is 'repugnant' to sovereign immunity and therefore abrogates the doctrine[.]").

CONCLUSION

This Court should grant the petition.

Respectfully submitted,

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FEBRUARY 2026

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SUPREME COURT OF ARKANSAS

No. CV-24-645

TOMMY LAND, IN HIS CAPACITY AS COMMISSIONER OF STATE LANDS FOR THE STATE OF ARKANSAS, APPELLANT V. BAS, LLC; PARCEL STRATEGIES, LLC; AND BANYAN CAPITAL INVESTMENTS, LLC, APPELLEES	Opinion Delivered: June 5, 2025 APPEAL FROM THE GREENE COUNTY CIRCUIT COURT [NO. 28CV-22-388] HONORABLE RICHARD LUSBY, JUDGE REVERSED.

NICHOLAS J. BRONNI, Associate Justice

This case is about whether the Commissioner of State Lands provided constitutionally adequate notice to BAS, a California LLC, before selling its Arkansas property to recover delinquent property taxes. Because the undisputed facts show that the Commissioner's notice to BAS was constitutionally sufficient, BAS fails to raise a valid claim and sovereign immunity applies. We reverse.

I. *Facts and Procedural Background*

In October 2016, BAS purchased commercial property in Paragould, Arkansas. The property's deed

listed BAS's mailing address as 3735 Winford Drive, Tarzana, California. Although Gary Solnit, one of BAS's two members, temporarily resided at that address, BAS conducted its business operations from a different location in Beverly Hills, California. Solnit asked the title company to change the deed to reflect the Beverly Hills address, but that change was never made. BAS also failed to register its mailing address with the county as required by state law. *See* Ark. Code Ann. § 26-35-705.

After BAS failed to pay its property taxes in 2017 and 2018, the Greene County Clerk certified the property to the Commissioner of State Lands for nonpayment. As required by statute, the Commissioner attempted to notify BAS of the upcoming tax sale and inform it of its right to redeem the property. On August 17, 2021, the Commissioner sent certified mail to BAS at 3735 Winford Drive in Tarzana, California—"the owner's last known address." Ark. Code Ann. § 26-37-301. Although certified mail typically requires a signature to complete delivery, the United States Postal Service temporarily relaxed that requirement during the COVID-19 pandemic. The Commissioner also requested a return receipt of the recipient's signature, even though the statute does not require one.

For reasons unknown, the Commissioner never received that physical return receipt. But using the USPS tracking data, the Commissioner verified that the notice had been "[d]elivered" to a front desk, reception area, or mailroom in Tarzana at 1:02 p.m. on August 24, 2021. Having no reason to question that data, the Commissioner did not investigate to determine whether 3735 Winford Drive had any such facilities. In June 2022, the Commissioner sent an

additional notice by certified mail directly to the Paragould property itself. That notice was returned undelivered.

Receiving no response from BAS, the Commissioner proceeded with the sale. On August 2, 2022, third parties purchased the property. Two months later, those purchasers filed an action to quiet title on the property. In response, BAS timely filed this lawsuit against the Commissioner, in his official capacity, contesting the validity of the tax sale. *See* Ark. Code Ann. § 26-37-203 (in general, "an action to contest the validity of a [tax delinquency sale]" must be "commenced within ninety (90) days after the date of conveyance"). BAS sought an injunction requiring the Commissioner to set aside the sale. *See* Ark. Code Ann. § 26-37-204 (the Commissioner "shall" set aside a tax sale if the "interested parties did not receive the required notice"). BAS's complaint alleged that the Commissioner violated its due process rights under both the federal and state constitutions when he conducted the sale without providing proper notice. It also claimed that the sale constituted an unlawful taking under both the Fifth Amendment and the Arkansas Constitution for the same reason.

The Commissioner moved for summary judgment, asserting that sovereign immunity barred BAS's claims. The circuit court denied that motion because it found that genuine issues of material fact remained concerning whether the Commissioner had violated BAS's due process rights. That, it held, prevented it from determining whether BAS's claim for injunctive relief fell within the recognized exception to sovereign immunity for illegal or unconstitutional acts. The Commissioner filed an interlocutory appeal. *See* Ark. R. App. P.–Civ. 2(a)(10).

II. *Discussion*

The Commissioner appeals the denial of his motion for summary judgment based on sovereign immunity. Summary judgment is appropriate only when no material dispute of fact remains and the moving party is entitled to judgment as a matter of law. *Gates v. Hudson*, 2025 Ark. 48, at 4–5, ___ S.W.3d ___, ___. We review decisions granting or denying summary judgment de novo. *See id.* at 5, ___ S.W.3d at ___; *Ark. Cmty. Corr. v. Barnes*, 2018 Ark. 122, at 2, 542 S.W.3d 841, 842. Applying that standard, we reverse the circuit court's decision denying the Commissioner's motion for summary judgment.

A. Sovereign Immunity

We begin with first principles. Our constitution provides that "[t]he State of Arkansas shall never be made defendant in any of her courts." Ark. Const. art. 5, § 20. That provision bars actions both against the State itself and "against a state official in his or her official capacity." *Ark. Dep't of Fin. & Admin. v. Lewis*, 2021 Ark. 213, at 3, 633 S.W.3d 767, 770. An official-capacity suit is "a suit against that official's office and is [consequently] no different than a suit against the State itself." *Id.* at 3, 633 S.W.3d at 770; *see also Bd. of Trs. of Univ. of Ark. v. Andrews*, 2018 Ark. 12, at 5, 535 S.W.3d 616, 619 ("A suit against the State is barred."). Indeed, by definition, an official-capacity suit seeks to "control the actions of the State or subject it to liability" via its officers. *Lewis*, 2021 Ark. 213, at 3, 633 S.W.3d at 770; *Hutchinson v. Armstrong*, 2022 Ark. 59, at 10, 640 S.W.3d 395, 400 (Womack, J., dissenting) ("[S]overeign immunity [applies] to state employees sued in their official capacities.").

That bar, however, is not absolute. We have recognized an exception for "lawsuits seeking declaratory or injunctive relief against state officials committing ultra vires, unconstitutional, or illegal acts." *Osage Creek Cultivation, LLC v. Ark. Dep't of Fin. & Admin.*, 2023 Ark. 47, at 6, 660 S.W.3d 843, 847. That exception is narrow and applies only when a plaintiff asserts a valid claim that identifies an illegal or unconstitutional act. *See Brizendine v. Dep't of Hum. Servs.*, 2025 Ark. 34, at 3, 708 S.W.3d 351, 353 ("A plaintiff seeking to surmount sovereign immunity under this exception is not exempt from complying with our fact-pleading requirements."); *Lewis*, 2021 Ark. 213, at 4, 633 S.W.3d at 770 (similar).

Consistent with that limitation, we have held that to avoid dismissal on sovereign immunity grounds, a plaintiff alleging a due process violation must "plead facts that, if proven, would demonstrate a due process violation that she can argue was an illegal or unconstitutional act sufficient to avoid sovereign immunity." *Williams v. McCoy*, 2018 Ark. 17, at 4, 535 S.W.3d 266, 269. When a plaintiff fails to do so, sovereign immunity applies and an official-capacity defendant is entitled to summary judgment. *See Chaney v. Union Producing, LLC*, 2020 Ark. 388, at 7, 611 S.W.3d 482, 487. That rule is particularly relevant here, and it is with that rule in mind that we turn to BAS's substantive claims.

B. Due Process

The trial court concluded that a genuine dispute of material fact exists about whether the Commissioner's attempt to notify BAS was reasonable, making it unclear whether an exception to sovereign immunity applies. We disagree. Instead, we conclude the facts

about the Commissioner's efforts are undisputed and that, as a matter of law, the Commissioner's efforts satisfied due process. BAS has therefore failed to allege an illegal or unconstitutional act that would overcome sovereign immunity, and the Commissioner is entitled to summary judgment.

1. The Due Process Clause of the Fourteenth Amendment prohibits states "from depriving any person of property 'without due process of law.'" *Dusenbery v. United States*, 534 U.S. 161, 167 (2002); U.S. Const. amend. 14, § 1. As relevant here, that requires states to provide property owners "'notice and an opportunity to be heard'" before a property can be sold for nonpayment of taxes. *Dusenbery*, 534 U.S. at 167 (quoting *United States v. Jones Daniel Good Real Prop.*, 510 U.S. 43, 48 (1993)); *accord Linn Farms & Timber Ltd. P'ship v. Union Pac. R.R. Co.*, 661 F.3d 354, 357–58 (8th Cir. 2011). But "[d]ue process does not require that a property owner receive actual notice before the government may take his property." *Jones v. Flowers*, 547 U.S. 220, 223 (2006) (citing *Dusenbery*, 534 U.S. at 170). Nor does it require Herculean "or heroic efforts" to notify owners. *Dusenbery*, 534 U.S. at 170–71; *accord Mullane v. Cent. Hanover Bank & Tr. Co.*, 339 U.S. 306, 315 (1950). "Rather," the Supreme Court has explained, "due process requires the government to provide 'notice reasonably calculated, under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections.'" *Jones*, 547 U.S. at 226 (quoting *Mullane*, 339 U.S. at 314).

Reflecting that standard, the Supreme Court has also made clear that the government may not rely on an attempted notice that it knows or "had good reason

to suspect" has failed. *Id.* at 230. So, for instance, while "mailed notice of a pending tax sale" is generally "constitutionally sufficient," *Dusenbery*, 534 U.S. at 170, that is not the case "when the government becomes aware prior to the taking that its attempt at notice has failed." *Jones*, 547 U.S. at 227; *see also Mennonite Bd. of Missions v. Adams*, 462 U.S. 791, 800 (1983) (where the relevant party's "name and address are reasonably ascertainable[,]" mailed notice is virtually "certain to ensure actual notice"). Instead, as in *Jones*, when a mailed notice is returned undelivered and the government knows the owner is "no better off than if the notice had never been sent," the government is required to "take further reasonable steps if any [are] available." *Jones*, 547 U.S. at 230 (quoting *Malone v. Robinson*, 614 A.2d 33, 37 (D.C. 1992)). Indeed, due process requires the government to do what a reasonable person would do before taking and selling an owner's property—and taking "no further action is not what someone 'desirous of actually informing' [the owner] would do." *Id.*

2. Applying that standard here, the undisputed facts demonstrate that the Commissioner did not violate BAS's due process rights when it took and sold the Paragould property for nonpayment of taxes. The circuit court erred in concluding otherwise.

Start with the circuit court's conclusion that a genuine dispute of material facts precluded summary judgment. It did not identify any such disputes, and on this record, even viewing the evidence in the light most favorable to BAS, we are unable to identify any. On the contrary, the record demonstrates and the parties agree that: (1) in August 2021, the Commissioner sent a notice via certified mail, return receipt requested, to the Tarzana address on the

Paragould property deed; (2) BAS did not conduct business at that address, but one of its members had previously resided there; (3) the Commissioner never received a physical return receipt; (4) the Commissioner obtained USPS tracking data indicating that the notice had been delivered to a front desk, reception area, or mailroom at the Tarzana address; and (5) the Commissioner did not know or investigate whether the Tarzana address has such an area.

Given that, as best as we can tell, the circuit court appears to have concluded—not that factual disputes remained but—that the parties disputed whether the facts showed a due process violation. But whether those facts add up to a due process violation is a legal question that does not preclude summary judgment. *See Stauch v. City of Columbia Heights*, 212 F.3d 425, 431 (8th Cir. 2000) ("[D]ue process is a question of law for the court to determine."); *see also Norton v. Hinson*, 337 Ark. 487, 490, 989 S.W.2d 535, 536 (1999) ("[S]ummary judgment . . . [does] not involve any factual findings."). The circuit court erred in suggesting otherwise.

Next, the merits. Accepting, as we must, those undisputed facts as true, we conclude that the Commissioner's August 2021 mailing was "reasonably calculated to reach the intended recipient" and inform it of an upcoming tax sale. *Jones*, 547 U.S. at 226. That notice was sent via certified mail to the property owner's last known address in Tarzana. The Commissioner had identified that address using BAS's recorded deed; he did so because BAS had violated state law by failing to register its mailing address with the county. Nothing in the record suggests the Commissioner knew—or had any reason to suspect—the Tarzana address was not accurate

and up to date. Against that backdrop, BAS does not seriously dispute the reasonableness of that attempt to provide notice and that, if that is all we knew, the Commissioner's effort would satisfy due process. Nor could it. *Cf. Robinson v. Hanrahan*, 409 U.S. 38, 40 (1972) ("the State *knew* that appellant was not at the address to which the notice was mailed" (emphasis added)).

BAS claims instead that, as in *Jones*, subsequent facts and circumstances should have alerted the Commissioner that his mailing had failed and that he needed to take additional steps to notify BAS of the tax sale. In particular, BAS argues that the lack of a physical return receipt and absence of a mailroom at the Tarzana address should have alerted the Commissioner that there was a problem. That argument badly misses the mark.

Consider the missing receipt. BAS's argument wrongly conflates not receiving a physical, signed returned receipt with a notice being returned undelivered. The two are not equivalent. Returned mail has not been delivered, and "when a letter is returned by the post office, the sender will ordinarily attempt to resend it, if it is practicable to do so." *Jones*, 547 U.S. at 230. By contrast, a missing return receipt does not show that notice failed—it merely shows the receipt has not been returned. That could be true because the receipt, as opposed to the notice itself, has gone awry. So at worst, the lack of a return receipt arguably raises a question about delivery. And if the Commissioner had failed to follow up, there might very well have been a due process problem here.

But that is not the case. Rather, the record demonstrates that, lacking a return receipt, the

Commissioner examined USPS tracking data and confirmed the notice "was delivered to the front desk, reception area, or mail room at 1:02 pm on August 24, in Tarzana, CA 91356." Hence, far from neglecting the issue, the Commissioner did what anyone in his situation would have done: he checked the presumptively reliable tracking data. BAS does not really dispute that.

Instead, faced with that reasonable effort, BAS attempts to shift the inquiry and argues that the Commissioner was required to take another step and verify that the Tarzana address had a front desk, reception area, or mail room. As BAS sees it, if the Commissioner had expanded his investigation, he would have known the Tarzana address was a residential address without any such facilities, and this would have prompted him to reattempt notice. Yet BAS never explains why the Commissioner should have second-guessed the USPS tracking data. Nor does the record reveal any facts that would give him a reason to do so. As a result, BAS's attempt to analogize this case to *Jones*, where the State knew the notice had failed, falls flat. *See Jones*, 547 U.S. at 234 ("What [additional] steps are reasonable in response to the new information depends upon what the new information reveals.").

To be sure, the Commissioner could have done more here. He could have used Google Street View to investigate the Tarzana address and that might, as BAS argues, have prompted him to question whether what appears to be a residential address has a front desk, reception area, or mail room. He could have sent more than one mailing, including regular mail, to the same address. *See id.* at 235. He could have posted notice on the property, especially since his decision to

mail notice to the property itself was returned undelivered.[1] *Id.* He could have conducted "[a]n open-ended search for a new address," *id.* at 236, or contacted the California Secretary of State to obtain an alternative address for BAS. That is what the third-party purchasers in the companion quiet-title case did, and BAS's actual notice of that action suggests that would have been a better approach.

But it is not for us to decide whether the process could have been better as the constitution does not require the state to employ every conceivable means to provide notice. *See Dusenbery*, 534 U.S. at 170. Nor would such an approach be practical since there will always be something else the government *could* have done. Rather, due process requires the government to act "as one desirous of actually informing" the property owner of the impending tax sale. *Mullane*, 339 U.S. at 315. And faced with USPS tracking data indicating that the Commissioner's notice had been delivered, we cannot say that due process required the Commissioner to do more or that his efforts were a mere "gesture." *Id.*

Ultimately, while due process requires a fact-intensive analysis to determine whether notice was reasonable "under all the circumstances," *id.* at 314, BAS was still required to identify facts demonstrating that the Commissioner acted unreasonably. It has not done so. We conclude that the August 2021 notice was "reasonably certain to inform" BAS of the tax sale. *Jones*, 547 U.S. at 226. The Commissioner therefore

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[1] BAS does not argue that the return of the June 2022 mailing required the Commissioner to take additional steps. It merely argues that second mailing itself was not a reasonable additional step.

did not violate BAS's due process rights, and BAS's claims premised on such a violation fail as a matter of law. Thus, on this record, BAS has failed to plead an unconstitutional or illegal act that would overcome sovereign immunity, and the circuit court should have granted the Commissioner's motion for summary judgment.

C. Takings Claim

BAS's attempt to recast its due process claim as a takings claim does not alter the analysis. BAS's takings claims rely on the argument that—under *Jones*—a tax sale without proper notice constitutes a taking under both the Fifth Amendment and the Arkansas Constitution. *See* Oral Argument at 37:20 https://arkansas-sc.granicus.com/MediaPlayer.php?view_id=4&clip_id=1700 (May 8, 2025), archived at https://perma.cc/9VA6-PHXA. *Land v. BAS*, 2025 Ark. ___ (No. CV-24-645). Even assuming BAS's characterization of *Jones* is correct, that would not help BAS. On the contrary, those claims too would fail as a matter of law because the undisputed facts establish that the Commissioner provided BAS with adequate notice before conducting the tax sale. *See supra* at __. So as above, those claims do not establish an illegal act that allows BAS to overcome sovereign immunity.

Yet that is hardly the only problem with BAS's argument. Rather, it fails for an even more fundamental reason: *Jones* involved a procedural due process claim—not a takings claim. While *Jones* does say that notice is required "[b]efore a State may take property," 547 U.S. at 223, it did not use the term "take" in the manner contemplated by either the Fifth Amendment or article 2, section 22 of the Arkansas Constitution. Nor could it since tax sales represent a

"mandated 'contribution from individuals . . . for the support of the government . . . for which they receive compensation in the protection which government affords.'" *Tyler v. Hennepin Cnty., Minnesota*, 598 U.S. 631, 637 (2023) (quoting *County of Mobile v. Kimball*, 102 U.S. 691, 703 (1881)) (alterations in original).

That makes sense because takings clauses are "designed 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." *Id.* at 647 (quoting *Armstrong v. United States*, 364 U.S. 40, 49 (1960)); *accord Bagley v. Castile*, 42 Ark. 77, 85 (1883) ("[T]he forfeiture and sale of lands by summary process, for the purpose of enforcing the payment of taxes, have not been considered by most courts as that deprivation of property which our and similar constitutions meant to prohibit."). A tax sale does the opposite; it ensures individuals do not avoid their share of the public burden. *See Bagley*, 42 Ark. at 85 ("The twenty-second section simply regards the exercise of the right of eminent domain, which is something wholly different in nature from the taxing power.").

We therefore hold that BAS's attempt to recast its due process claim as a takings claim likewise fails as a matter of law; it has failed to allege or offer evidence of an unconstitutional or illegal act that would overcome sovereign immunity; and the Commissioner is entitled to summary judgment.

D. Supremacy Clause Claim

One loose end remains. Recognizing the weakness of its claims on the merits, BAS tries to sidestep the sovereign immunity issue altogether. It suggests

that—whatever our constitution says—the federal Supremacy Clause requires us to review his federal claims. That argument, which BAS does not fully develop in its briefing, fares no better than its other arguments.

Begin with basic principles. As *Alden v. Maine* explains, "history, practice, precedent, and the structure of the Constitution" establish that "[s]tates retain immunity from private suit in their own courts." 527 U.S. 706, 754 (1999). Indeed, as the ratification debates demonstrate, a state's "right to assert immunity from suit in its own courts was a principle so well established that no one conceived it would be altered by the new Constitution." *Id.* at 741. And had the states not "retain[ed] a constitutional immunity from suit in their own courts, the need for the *Ex parte Young* rule would have been less pressing, and the rule would not have formed so essential a part of [the federal] sovereign immunity doctrine. [*Ex parte Young*, 209 U.S. 123 (1908)]." *Id.* at 748.

To be sure, the Supreme Court has recognized narrow exceptions to the general rule—like where "[t]he States have consented" to be sued "pursuant to the plan of the Convention or to subsequent constitutional Amendment." *Id.* at 755. For instance, "[i]n ratifying the Constitution, the States consented to suits brought by other States or by the Federal Government." *Id.* And perhaps most relevant here, *Reich v. Collins*, 513 U.S. 106 (1994), held that "despite its immunity from suit in federal court, a State that holds out what plainly appears to be 'a clear and certain' postdeprivation remedy for taxes collected in violation of federal law" can be subject to suit in state court. *Id.* at 740.

Yet even assuming BAS meant to invoke that exception here, it would not change the analysis. The undisputed record here demonstrates that the Commissioner provided constitutionally sufficient notice before it proceeded with the challenged tax sale. So BAS cannot plausibly claim that Arkansas law has prevented it from vindicating its federal rights—only that it has required BAS, like any litigant, to present evidence of a viable legal claim to proceed. And nothing in the federal constitution suggests BAS is entitled to press claims that fail as a matter of federal law. *Cf. Howlett By & Through Howlett v. Rose*, 496 U.S. 356, 380 (1990) ("A State may adopt neutral procedural rules to discourage frivolous litigation of all kinds, as long as those rules are not pre-empted by a valid federal law. A State may not, however, relieve congestion in its courts by declaring a whole category of federal claims to be frivolous. Until it has been proved that the claim has no merit, that judgment is not up to the States to make."). Indeed, far from "regularly . . . entertain[ing] analogous suits," our constitution expressly prohibits our courts from hearing suits against the State where there is no evidence the state has acted unlawfully. *See Haywood v. Drown*, 556 U.S. 729, 739-40 (2009) (finding Supremacy Clause violation where state law barred state courts of general jurisdiction from hearing certain suits based on content rather than "concerns of power over the person and competence over the subject matter"). So we reject BAS's claim that the Supremacy Clause somehow entitles it to pursue meritless claims.

III. *Conclusion*

Nothing in this case turns on the wisdom of the current notice statutes. Whether that current statutory scheme strikes the best cost-benefit balance, could be marginally improved, or could be tweaked to provide better options is beyond the purview of this case and is for the "legislature to resolve." *Standridge v. Fort Smith Pub. Schs.*, 2025 Ark. 42, at 11, 708 S.W.3d 773, 781. Instead, our role is limited to deciding whether the Commissioner's actions here were constitutionally sufficient. On this record, the undisputed facts show that the Commissioner's August 2021 notice—sent by certified mail to BAS's last known address—was reasonably calculated to inform BAS of the impending tax sale. BAS's claims therefore fail as a matter of law; BAS has not overcome sovereign immunity; and the Commissioner is entitled to summary judgment.

Reversed.

WEBB, J., concurs.

BAKER, C.J., concurring in part and dissenting in part.

HUDSON and WOMACK, JJ., dissent.

KAREN R. BAKER, Chief Justice, concurring in part and dissenting in part. I agree with the majority's decision to reverse with regard to the state claims; however, I write separately for the reasons stated in my dissent in *Board of Trustees of the University of Arkansas v. Andrews*, 2018 Ark. 12, at 13, 535 S.W.3d 616, 624, and its progeny.

In the present case, the majority states that "[w]e have recognized an exception for 'lawsuits seeking declaratory or injunctive relief or injunctive relief

against state officials committing ultra vires, unconstitutional, or illegal acts.' *Osage Creek Cultivation, LLC v. Arkansas Dep't of Fin. & Admin.*, 2023 Ark. 47, at 6, 660 S.W.3d 843, 847." The majority ultimately reverses the circuit court's denial of summary judgment and concludes that BAS "failed to allege an illegal or unconstitutional act that would overcome sovereign immunity, and the Commissioner is entitled to summary judgment." However, this position conflicts with the broad language of *Andrews*, 2018 Ark. 12, 535 S.W.3d 616. Article 5, section 20 of the Arkansas Constitution provides that "[t]he State of Arkansas shall never be made defendant in any of her courts." In my view, the state claims must be reversed and dismissed on the basis of this court's precedent established in *Andrews*, in which the majority held,

> [W]e interpret the constitutional provision, "The State of Arkansas shall never be made a defendant in any of her courts," precisely as it reads. The drafters of our current constitution removed language from the 1868 constitution that provided the General Assembly with statutory authority to waive sovereign immunity and instead used the word "never." *See* Ark. Const. of 1868, art. 5, § 45; Ark. Const. art. 5, § 20. The people of the state of Arkansas approved this change when ratifying the current constitution.

2018 Ark. 12, at 10–11, 535 S.W.3d at 622. In other words, the majority held that "never means never," and *Andrews* did not identify exceptions, exemptions, or the like. *See Banks v. Jones*, 2019 Ark. 204, at 11, 575 S.W.3d 111, 118 (Baker, J., concurring); *see also Ark. Oil & Gas Comm'n v. Hurd*, 2018 Ark. 397, at 18,

564 S.W.3d 248, 258 (Baker, J., dissenting). Thus, because *Andrews* has not been overruled, the state claims are barred under its broad language. In sum, I would reverse and dismiss the state claims.

However, sovereign immunity under the Arkansas Constitution cannot serve as a bar to federal claims. Therefore, as noted in Justice Hudson's dissenting opinion, issues of material fact remain, and I would affirm as to the federal claims.

Accordingly, I concur in part and dissent in part.

COURTNEY RAE HUDSON, Justice, dissenting. I would affirm the circuit court's order denying the Commissioner's motion for summary judgment, in which he alleged entitlement to sovereign immunity. Sovereign immunity is not applicable when, as here, a plaintiff alleges unconstitutional state action and seeks only injunctive relief, not damages. Further, there remain issues of material fact or inferences from the facts that are determinative of BAS's claims. Therefore, I respectfully dissent.

As the majority acknowledges, we have recognized an exception to sovereign immunity for "lawsuits seeking declaratory or injunctive relief against state officials committing ultra vires, unconstitutional, or illegal acts." *Osage Creek Cultivation, LLC v. Ark. Dep't of Fin. & Admin.*, 2023 Ark. 47, at 6, 660 S.W.3d 843, 847. Here, we have a somewhat atypical intersection of our doctrine of sovereign immunity and the denial of a motion for summary judgment—not a motion to dismiss. The majority has made a determination regarding the merits of the lawsuit to find that the Commissioner is entitled to sovereign immunity. But summary judgment is not appropriate if, under the evidence, reasonable minds might reach

different conclusions from the same undisputed facts. *See Cannady v. St. Vincent Infirmary Med. Ctr.*, 2018 Ark. 35, at 6, 537 S.W.3d 259, 263. This court views the evidence in the light most favorable to the party against whom the motion was filed, resolving all doubts and inferences against the moving party. *Id.*

Due process is a fact-intensive inquiry. The Commissioner concedes that he had no knowledge of the signed receipt (by an unknown recipient) prior to the tax sale. He argues that this fact is inconsequential because further steps are required only if mail is returned unclaimed. But this is too narrow a reading of *Jones v. Flowers*, 547 U.S. 220 (2006). It is true that in *Jones* the tax-sale notice was returned unclaimed. But the issue was whether due process entails further responsibility when the government becomes aware prior to the taking that its attempt at notice has failed. To use the Supreme Court's example in *Jones*, "[i]f the Commissioner prepared a stack of letters to mail to delinquent taxpayers, handed them to the postman, and then watched as the departing postman accidentally dropped the letters down a storm drain, one would certainly expect the Commissioner's office to prepare a new stack of letters and send them again." *Jones*, 547 U.S. at 229. The Supreme Court stated that failure to follow up under such circumstances would not be reasonable, "despite the fact that the letters were reasonably calculated to reach their intended recipients when delivered to the postman." *Id.*

In the present case, the circuit court found as follows:

> [T]he central issue is whether the Commissioner's steps were "reasonably calculated" to give

> notice "under all the circumstances" which include the nature and process of certified mail delivery, the content of the USPS tracking report and the inferences that can be drawn. What is and is not reasonably calculated and what are all the circumstances are matters to be determined by the finder of fact. This Court declines to find as a matter of law that the efforts of the Commissioner were reasonably calculated to provide notice.

"[D]ue process is flexible and calls for such procedural protections as the particular situation demands." *Gilbert v. Homar*, 520 U.S. 924, 930 (1997). Here, there are unresolved issues of fact regarding the lack of the requested return receipt, how USPS COVID protocols might have affected delivery, and whether or to what extent the Commissioner relied on the USPS online tracking. All these factors potentially go to whether the Commissioner became aware prior to the tax sale that its attempt at notice had failed.

On this record, BAS has pleaded an unconstitutional or illegal act that, if proved, would overcome sovereign immunity, and the circuit court correctly denied the Commissioner's motion for summary judgment. Therefore, I would affirm the circuit court's order holding that the Commissioner is not entitled to sovereign immunity.

I respectfully dissent.

SHAWN A. WOMACK, Justice, dissenting. This case exemplifies how messy this court's sovereign immunity jurisprudence is. The court should retreat from its misguided approach and return to the text and original public meaning of article 5, section 20 of the Arkansas Constitution. That is, absent an express

constitutional provision to the contrary, the State shall never be made a defendant in any of its courts. [1]Here, however, there is an express constitutional provision to the contrary that provides an exception to sovereign immunity for BAS's state law claims: article 2, section 22 of the Arkansas Constitution. And under a proper understanding of article 5, section 20, *Haywood v. Drown* ties this court's hands on BAS's federal claims.[2] Accordingly, Land is not entitled to summary judgment at this stage.

For purposes of this appeal, Land moved for summary judgment on the grounds that sovereign immunity barred BAS's claims against him as a state actor.[3] In doing so, Land argued "that BAS cannot state an exception to sovereign immunity[.]" But he is wrong. The only true exceptions to article 5, section 20 are those that are found in the Arkansas Constitution or, as explained later, are imposed by the Supreme Court of the United States. There is no textual basis for the exceptions of unconstitutional, illegal, or ultra vires acts that this court has created from whole cloth.[4] The past reliance on *Ex Parte Young* as some

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[1] Ark. Const. art. 5, § 20; *Thurston v. League of Women Voters of Ark.*, 2022 Ark. 32, at 17, 639 S.W.3d 319, 327 (Womack, J., dissenting).

[2] 556 U.S. 729 (2009).

[3] *See* Ark. R. App. P.–Civ. 2(a)(10) (allowing interlocutory appeals of "[a]n order denying a motion to dismiss or for summary judgment based on the defense of sovereign immunity or the immunity of a government official"); *see Muntaqim v. Hobbs*, 2017 Ark. 97, at 2, 514 S.W.3d 464, 466 (explaining that the denial of a motion for summary judgment is typically not a final order and, therefore, not immediately appealable).

[4] *See, e.g.*, *Ark. Dep't of Fin. & Admin. v. Carpenter Farms Med. Grp., LLC*, 2020 Ark. 213, at 7, 601 S.W.3d 111, 117 (wrongly claiming that

shield for this court's analysis is misplaced.[5] The Supreme Court did not decide *Ex Parte Young* until well after Arkansas ratified article 5, section 20 in 1874; the concept of such a theory was completely foreign to anyone involved in the drafting or ratification of our current constitution.

That being said, article 2, section 22 of the Arkansas Constitution provides an express and constitutionally based exception to sovereign immunity. In full, article 2, section 22 provides that "[t]he right of property is before and higher than any constitutional sanction; and private property shall not be taken, appropriated or damaged for public use, without just compensation therefor." Because the right to property is "*before and higher than any constitutional sanction*," sovereign immunity, a constitutional sanction, cannot be an obstacle to a claim of this right.[6] Therefore, sovereign immunity cannot defeat BAS's state law claims against Land regarding the taking of its property.

Of course, the State, like any other defendant, could move for summary judgment on the grounds that there are no disputed material facts and it is entitled to summary judgment as a matter of law. But when there is a constitutionally based exception to sovereign immunity—as there is here—that should be the end of the analysis when the appeal is brought under Rule 2(a)(10). With this court's current approach to sovereign immunity, the State, unlike any other defendant in Arkansas, gets a free opportunity

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article 5, section 20 "allow[s] actions that are illegal, unconstitutional or ultra vires to be enjoined") (internal quotation marks omitted).

[5] 209 U.S. 123 (1908).

[6] Ark. Const. art. 2, § 22 (emphasis added).

to appeal the denial of summary judgment beyond what Rule 2(a)(10) contemplates.

For BAS's federal claims, *Haywood v. Drown* prohibits this court from kicking them solely because of sovereign immunity. In *Haywood*, the Supreme Court held that states cannot "shut the courthouse door to federal claims that [they] consider[] at odds with [their] local policy"—i.e., article 5, section 20.[7] According to the Supreme Court, this "invocation of 'jurisdiction' as a trump" to end federal claims in state court is unconstitutional under the Supremacy Clause.[8] Under a proper reading of article 5, section 20, this is exactly what sovereign immunity does to BAS's federal claims.[9] Because of *Haywood*, Land is not entitled to claim sovereign immunity as a shield from BAS's federal claims at this stage. As with the state claims, however, Land may eventually prevail on summary judgment if there are no disputed material facts, and he is entitled to judgment as a matter of law. But, if the circuit court denies such a motion, then Land must go to trial—as would be the case with any other defendant.

For these reasons, I respectfully dissent and would affirm the circuit court's order.

Tim Griffin, Att'y Gen., by: *Lisa Wiedower*, Ass't Att'y Gen.; and *Julius J. Gerard*, Ass't Att'y Gen., for appellant.

Quattlebaum, Grooms & Tull PLLC, by: *Joseph R. Falasco* and *Laura L. O'Hara*, for appellee BAS, LLC.

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[7] *Haywood*, 556 U.S. at 740.

[8] *Id.* at 741.

[9] *See League of Women Voters of Ark.*, 2022 Ark. 32, at 17, 639 S.W.3d at 327 (Womack, J., dissenting).

Bryan E. Hosto, for appellee Banyan Capital Investments, LLC.

Stephen Whitwell, for appellee Parcel Strategies, LLC.

Francis J. "Frank" Cardis, for appellees Parcel Strategies, LLC; and Banyan Capital Investments, LLC.

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28CV22-388
C02D02: 4 Pages

**IN THE CIRCUIT COURT OF
GREENE COUNTY, ARKANSAS
CIVIL DIVISION**

BAS, LLC **PLAINTIFF**

VS. **No. 28CV-22-388**

TOMMY LAND, IN HIS OFFICIAL CAPACITY AS ARKANSAS COMMISSIONER OF STATE LANDS **DEFENDANT**

**PARCEL STRATEGIES, LLC and
BANYAN CAPITAL INVESTMENTS, LLC**
INTERVENORS

"REVISED" ORDER DENYING MOTION FOR SUMMARY JUDGMENT

A pre-trial was held in the above case on Thursday, August 29, 2024. Among the matters addressed at the hearing was the *Motion for Summary Judgment* of Defendant Tommy Land in his capacity as Commissioner of State Lands for the State of Arkansas filed August 2, 2024. Land contends the claims of Plaintiff BAS, LLC are barred by the doctrine of sovereign immunity. From its amended complaint forward, BAS has sought both monetary damages and injunctive relief. The monetary damage sought by BAS was the fair market value of the property at the

time it was "taken."[1] The injunctive relief sought is to have the tax sale of the property set aside.

Near the conclusion of oral arguments on Land's motion, counsel for BAS announced that BAS is electing to pursue injunctive relief only, waiving its claim for monetary damages. Given the waiver of monetary damages, the issue remaining for the Court to decide is whether the claim of BAS for injunctive relief is barred by the doctrine of sovereign immunity.[2]

In his *Brief in Support of Motion for Summary Judgment*, Land acknowledged that the Arkansas Supreme Court has recognized exceptions of sovereign immunity where the State has allegedly acted unconstitutionally. (BIS, p. 11, citing *Ark. Game & Fish Comm'n v. Eddings*, 2011 Ark. 47, 378 S.W.3d 694, 697 (2011). When arguing the point related specifically to claims for monetary damages, Land rightly drew a distinction between such claims and those for injunctive relief. (BIS, p. 11, Citing *Martin v. Haas*, 2018 Ark. 283, 556 S.W.3d 509, 515. This Court agrees with Land that as a state official acting in his official capacity, he is entitled to sovereign immunity against any claim for monetary damages in such cases as this one. However, that issue is moot here as BAS has waived its claim for such damages.

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[1] Land denies that forfeiture for unpaid taxes is a "taking" by the State.

[2] Though Land's motion and brief discussed the matter of the State's compliance with A.C.A. § 26-37-301, the Court ruled as a matter of law that the statutory requirements were met. (*Order Denying the Summary Judgment Motion of BAS and Granting in Part and Denying in Part the Counter-Motions of Parcel Strategies and Banyan* entered 1/29/24.)

As to injunctive relief, the Court finds BAS is entitled to proceed against Land in his official capacity if it can show that one of the three recognized exceptions to the doctrine of sovereign immunity applies. BAS alleges it was denied due process of law under the constitutions of the State of Arkansas and the United States. Specifically, BAS alleges that Land did not provide it with notice reasonably calculated, under all the circumstances, to apprise BAS of its tax delinquency and the future tax sale. See *Mullane v. Central Hanover Bank Trust Co.*, 339 U.S. 306 (1950) and *Jones v. Flowers*, 547 U.S. 220 (2006). Thus, these allegations of due process violations, if proven, bring this action for injunctive relief squarely within a recognized exception to sovereign immunity. *Harmon v. Payne*, 2020 Ark. 17, 592 S.W. 3d 619.

This Court in its January 29, 2024 precedent (*Order Denying the Summary Judgment Motion of BAS and Granting in Part and Denying in Part the Counter-Motions of Parcel Strategies and Banyan*) held that there are issues of fact which must be resolved in order to determine whether notice provided by Land met due process requirements. A number of these factual issues are set forth on page six of the January 29th order which is incorporated herein. What is and is not "reasonably calculated" and the nature of "all the circumstances" and inferences which can be drawn therefrom are matters to be determined by the trier of fact. Consequently, the Court cannot at this juncture hold as a matter of law that the exception does not apply and that Land is entitled to sovereign immunity.

As noted herein, BAS has waived monetary damages and elected the remedy of injunctive relief setting aside the tax sale. Consequently, the Court is

now the trier of fact in this case. That said, in an order entered August 1, 2024, the Court stated it would employ the use of an advisory jury pursuant to Rule 39(c) of the Arkansas Rules of Civil Procedure.

In reaching the decision set forth above, the Court is NOT ruling that Ark. Code Ann. § 26-37-301 setting out the procedures for giving to notice to property owners is unconstitutional. The statutory notice procedures are not unconstitutional. The question in this case is whether the execution of those procedures under all circumstances was sufficient to meet constitutional due process requirements. The answer to that question turns upon the resolution of the issues of fact.

For all the reasons articulated herein, the *Motion for Summary Judgment* of Land is denied.

IT IS SO ORDERED this 5 day of September, 2024.

s/Richard Lusby
RICHARD LUSBY,
Circuit Judge

cc: Court File
Frank J. Cardis
Joseph R. Falasco
Laura O'Hara
Stephen E. Whitwell
Bryan E. Hosto
Lisa Wiedower

OFFICE, OF THE CLERK
ARKANSAS SUPREME COURT
625 MARSHALL STREET
LITTLE ROCK, AR 72201

SEPTEMBER 4, 2025

RE: SUPREME COURT CASE NO. CV-24-645 TOMMY LAND, IN HIS CAPACITY AS COMMISSIONER OF STATE LANDS FOR THE STATE OF ARKANSAS V. BAS, LLC; PARCEL STRATEGIES, LLC; AND BANYAN CAPITAL INVESTMENTS, LLC

THE ARKANSAS SUPREME COURT ISSUED THE FOLLOWING ORDER TODAY IN THE ABOVE STYLED CASE:

"APPELLEES' PETITION FOR REHEARING IS DENIED. HUDSON AND WOMACK, JJ., WOULD GRANT."

SINCERELY,

s/Kyle E. Burton

KYLE E. BURTON, CLERK

CC: JOSEPH R. FALASCO AND LAURA L. O'HARA
LISA WIEDOWER AND JULIUS J. GIRARD, ASSISTANT ATTORNEYS GENERAL
GREENE COUNTY CIRCUIT COURT
(CASE NO. 28CV-22-388)

FILED on March 6, 2024

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS
SECOND DIVISION

BAS, LLC PLAINTIFF

v. Case No. 28CV-22-388

TOMMY LAND, in his capacity as Commissioner for the State of Arkansas Commissioner of State Lands
DEFENDANT

PARCEL STRATEGIES, LLC and
BANYAN CAPITAL INVESTMENTS, LLC
PLAINTIFFS

Case No. 28CV-22-380

BAS, LLC, *et al.* DEFENDANTS

FIRST AMENDED COMPLAINT

BAS, LLC ("BAS"), for its first amended complaint against Tommy Land, in his capacity as Commissioner for the State of Arkansas Commissioner of State Lands ("Commissioner"), states:

PARTIES AND JURISDICTION

1. BAS is a California limited liability company with its principal place of business in Beverly Hills, Los Angels County, California. BAS is the rightful owner of the real property that is the subject of this action.

2. The Arkansas Commissioner of State Lands ("COSL") is an Arkansas government agency. Tommy Land is the acting Commissioner and the chief executive officer of the COSL. The COSL is headquartered at the State Capitol Building, 500

Woodlane St., Suite 109, Little Rock, Arkansas 72201, and may be served through any of its officers or employees, and by mailing a copy of this lawsuit to Land via certified mail, return receipt requested, and restricted delivery.

3. This is an action filed pursuant to Ark. Code Ann. § 26-37-202 to contest the validity of a tax sale and to challenge the constitutionality of the notice provisions found in the Arkansas Tax Code for sales or forfeitures of real property. Ark. Code Ann. §§ 26-37-101 *et seq*. and 26-37-301. This action is timely filed. Ark. Code Ann. § 26-37-203(b)(1).

4. The real property that is the subject of this action is located in Green County, Arkansas, identified as Parcel No. 1002-25430-006 ("the Property"). The Property is more particularly described as follows:

> TRACT A AS SHOWN ON PLAT OF LOT SPLIT FILED FOR RECORD IN SURVEY BOOK QQ, PAGE 7, RECORDS OF GREENE COUNTY, ARKANSAS, DESCRIBED AS:
>
> A TRACT OF LAND BEING A PART OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 17 NORTH, RANGE 5 EAST, GREENE COUNTY, ARKANSAS, BEING MORE PARTICULARLY DESCRIBED AS FOLLOWS:
>
> COMMENCING AT A FOUND MAG NAIL BEING THE NORTHEAST CORNER OF THE SOUTHWEST QUARTER OF THE SOUTHEAST QUARTER OF SECTION 25, TOWNSHIP 17 NORTH, RANGE 5 EAST, GREENE COUNTY, ARKANSAS, THENCE SOUTH 89 DEGREES 25 MINUTES 47 SECONDS WEST,

ALONG THE NORTH LINE OF SAID QUARTER SECTION, 240.34 FEET TO A POINT ON THE WEST RIGHT OF WAY LINE OF UNITED STATES HIGHWAY 49; THENCE SOUTH 21 DEGREES 10 MINUTES 32 SECONDS WEST, 5.51 FEET TO A POINT; THENCE SOUTH 23 DEGREES 43 MINUTES 16 SECONDS WEST, 9.63 FEET TO AN AHTD MONUMENT, SAID POINT BEING THE POINT OF BEGINNING; THENCE, ALONG THE WEST RIGHT OF WAY LINE OF UNITED STATES HIGHWAY 49, SOUTH 23 DEGREES 38 MINUTES 18 SECONDS WEST, 259.14 FEET TO A POINT; THENCE, LEAVING SAID RIGHT OF WAY LINE, NORTH 68 DEGREES 59 MINUTES 08 SECONDS WEST, 18.98 FEET TO A POINT THENCE NORTH 19 DEGREES 48 MINUTES 36 SECONDS EAST, 143.59 FEET TO A POINT ON THE SOUTH RIGHT OF WAY LINE OF COUNTRY CLUB ROAD; THENCE ALONG SAID SOUTH RIGHT OF WAY LINE THE FOLLOWING COURSES: NORTH 88 DEGREES 53 MINUTES 19 SECONDS EAST, 36.64 FEET TO A POINT; NORTH 88 DEGREES 53 MINUTES 19 SECONDS EAST, 79.22 FEET TO A FOUND AHTD MONMENT; NORTH 89 DEGREES 32 MINUTES 25 SECONDS EAST, 195.79 FEET BACK TO THE POINT OF BEGINNING, SAID TRACT CONTAINING 56,631 SQUARE FEET OR 1.300 ACRES MORE OR LESS (the "Property").

5. This Court has jurisdiction of the subject matter and parties and venue is proper pursuant to Ark. Code Ann. § 16-60-101.

FACTUAL BACKGROUND

6. On or about October 5, 2016, PB General Holdings executed and delivered a Special Warranty Deed in favor of BAS. The Special Warranty Deed was recorded on October 5, 2016, as Document No. 201607221 with the Ex Officio Recorder for Green County, Arkansas. **Exhibit 1, BAS Deed.**

7. During BAS's ownership of the Property, the Property was certified by the Green County Clerk/Collector to the COSL for non-payment of taxes.

8. Tommy Land, the Commissioner of State Lands for the State of Lands of Arkansas (the "Commissioner") did a Records and Lien Search Request for the Property related to the certification from the Green County Clerk. **Exhibit 2, Records and Lien Search Request.**

9. The Records and Lien Search Request showed the BAS was the record owner of the Property and that BAS's address was 3735 Winford Drive, Tarzana, California, 91356. **Exhibit 2.**

10. The search also showed that the Property's physical address was 1100 Country Club, Paragould, Arkansas, 72450. **Exhibit 2.**

11. The Records and Lien Search Report used an incomplete property description: PT SW1/4 SE1/4 (BEING TRACT AS SHOWN ON SVY QQ-7) (56,631 SF or 1.3 AC) AS DESCRIBED IN DEED 201607221. Section: 25 Township: 17N Range: 05E Acreage: 1.3 Lot: Bock: City: Addition: SD: S1P C. **Exhibit 2.**

12. On August 17, 2021, pursuant to Ark. Code. Ann. § 26-37-301, the Commissioner sent a notice of delinquency and future tax sale to BAS at the

Tarzana, California address ("August 2021 Notice"). **Exhibit 3, August 2021 Notice.**

13. The August 2021 Notice stated that the Property would be sold on August 2, 2022, if BAS did not pay all taxes, penalties, interest, and costs prior to that date. **Exhibit 3.**

14. The August 2021 Notice was sent via certified mail with return receipt requested. **Exhibit 4, Commissioner Deposition, at 36:10-22.**

15. Certified mail, whether sent with return receipt requested or otherwise, requires a signature from the intended recipient. **Exhibit 4, at 34:8-35:7.**

16. The August 2021 Notice was allegedly delivered to a front desk, reception area, or mail room of the Tarzana address on August 24, 2021. **Exhibit 4, 2021 USPS Tracking Records.**

17. The Tarzana, California address is a residence and does not have a front desk, reception area, or mail room. **Exhibit 5, Affidavit of Gary Solnit, at ¶ 8.**

18. Neither BAS nor its representatives resided at the Tarzana, California address at the time of the purported notice. **Exhibit 5, Affidavit of Gary Solnit, at ¶ 6.**

19. BAS did not receive the August 2021 Notice that was allegedly delivered to a non-existent front desk, reception area, or mail room. **Exhibit 5, Affidavit of Gary Solnit, at ¶ 7.**

20. Though it had requested one, the Commissioner never received a return receipt for the August 2021 Notice. **Exhibit 4, at 35:2-36:22.**

21. There is no record showing that the mail carrier delivered the August 2021 Notice to the intended

recipient and received a signature. **Exhibit 4, at 35:2-36:22.**

22. The Commissioner knew that it had requested a return receipt for the August 2021 Notice but that some error had prevented the completion of the certified mail process. **Exhibit 4, at 35:9-37:25.**

23. The Commissioner knew or should have known that BAS did not receive the August 2021 Notice.

24. On June 27, 2022, the Commissioner sent by certified mail a notice of delinquency and future tax sale to the Property's physical address in Paragould, Arkansas ("June 2022 Notice"). **Exhibit 6, June 2022 Notice.**

25. The June 2022 Notice did not comply with statutory notice requirements. **Exhibit 4, at 45:4-48:8.**

26. The June 2022 Notice did not accomplish actual notice. Its return receipt and USPS tracking number showed that the June 2022 Notice was returned to sender as "ATTEMPTED—NOT KNOWN UNABLE TO FORWARD." **Exhibit 6, June 2022 Notice.**

27. BAS did not receive the June 2022 Notice. **Exhibit 5, Affidavit of Gary Solnit, at ¶ 11.**

28. The Commissioner knew or should have known that BAS did not receive the June 2022 Notice because it was returned to the Commissioner as undelivered. **Exhibit 6, June 2022 Notice.**

29. The Commissioner took no additional steps to effect notice of the impending tax sale of the Property after (1) being on notice that there had been an error with delivery of the August 2021 Notice and (2) receiving the June 2022 Notice return receipt

showing that the certified letter had not been delivered. **Exhibit 4, at 88:20-89:7.**

30. Instead, the Commissioner proceeded with the sale of the Property on August 2, 2022. **Exhibit 7, Post-Sale Notice.**

31. On or about August 2, 2022, a public auction of the Property was conducted. Parcel Strategies, LLC, and Banyan Capital Investments (collectively "Parcel-Banyan") were the prevailing bidders at the auction.

32. On or about August 22, 2022, the Commissioner executed and delivered Limited Warranty Deed No. 22868 ("Deed 1") in favor of Parcel-Banyan for the Property. Deed 1 was recorded on September 2, 2022, as Document No. 2022007044 with the Ex Officio Recorder for Green County, Arkansas. **Exhibit 8, Deed 1.**

33. Deed 1 contained the same incomplete property description the Commissioner had been using throughout the certification, notice, and sale process. **Exhibit 8, Deed 1.**

34. On or about September 19, 2022, the Commissioner executed and delivered a second Limited Warranty Deed No. 228682 ("Deed 2") in favor of Parcel-Banyan for the Property. Deed 2 was recorded on September 22, 2022, as Document No. 2022007596 with the Ex Officio Recorder for Greene County, Arkansas, and was intended to correct the incomplete legal description in Deed 1. **Exhibit 9, Deed 2.**

CLAIM I –SETTING ASIDE TAX SALE

35. Paragraphs 1 through 34 are incorporated herein by reference as if set forth word for word.

36. When the Commissioner receives tax-delinquent land, Arkansas Code Annotated § 26-37-301(a)(1) requires the Commissioner to notify the owner at the owner's last known address, by certified mail, of the owner's right to redeem the land.

37. If the notice by certified mail is returned undelivered for reason other than being unclaimed or refused, then the Commissioner shall send a second notice to the owner at "any additional address reasonably identifiable through the examination of the real property records properly filed and recorded in the office of the county recorder where the tax-delinquent land is located[.]" Ark. Code Ann. § 26-37-301(a)(4).

38. The Fifth Amendment of the United States Constitution says no person shall be "deprived of . . . property without due process of law."

39. The Due Process Clause of the Fourteenth Amendment requires the government to provide owners "notice and opportunity for hearing appropriate to the nature of the case" before it may take property as a result of unpaid taxes.

40. The notice must be "reasonably calculated under all the circumstances, to apprise interested parties of the pendency of the action and afford them an opportunity to present their objections." *See Linn Farms and Timber Ltd. Partnership v. Union Pacific R. Co.*, 661 F.3d 354, 358 (8th Cir. 2011).

41. The Commissioner failed to make a reasonably calculated inquiry to notify all parties with an interest in the Property, including BAS, of the alleged tax delinquency as required by law.

42. The Commissioner violated BAS's Due Process rights and the tax sale should be set aside or otherwise cancelled.

CLAIM II –SECTION 1983 VIOLATION OF 5TH AND 14TH AMENDMENTS

43. Paragraphs 1 through 42 are incorporated herein by reference as if set forth word for word.

44. The Commissioner, under color of statute, ordinance, or custom subjected BAS to the deprivation of rights, privileges, and immunities secured by the United States Constitution and laws, including but not limited to: (a) a violation of the Fifth Amendment's prohibition against deprivation of property without due process; and (b) a violation of BAS's due process rights under the Fourteenth Amendment of the United States Constitution.

45. The elements of a Section 1983 claim are: "(1) the defendants acted under color of state law, and (2) the alleged wrongful conduct deprived the plaintiff of a constitutionally protected federal right." 42 U.S.C. § 1983.

46. The Commissioner deprived BAS of property without due process in violation of the Fifth and Fourteenth Amendments of the United States Constitution.

47. Due process requirements supersede any state statutory notice requirements and compliance with state statutory notice requirements is not a guarantee of due process. *See Linn Farms*, 661 F.3d 354.

48. The due process analysis centers on the government's knowledge and intent. When the government knows that its attempt to notify a property owner of an impending tax sale has failed,

due process requires the government to do something more before real property may be sold at a tax sale. *See Jones*, 547 U.S. 220, 227, 126 S.Ct. 1708, 164 L.Ed 415 (2006).

49. "[W]hen notice is a person's due . . . [t]he means employed must be such as one desirous of actually informing the absentee might reasonably adopt to accomplish it." *Mullane v. Cent. Hanover Bank & Trust Co.*, 339 U.S. 306, 315 (2006).

50. The State is required to act as one who truly wants to accomplish notice and to abandon notice only when no reasonable method of accomplishing notice remains available. *Jones*, 547 U.S. at 229.

51. Where the State knows that notice has not been accomplished, due process requires it to "take additional reasonable steps to attempt to provide notice to the property owner before selling his property, if it is practicable to do so." *Jones*, 547 U.S. at 225.

52. The Commissioner knew that it had not completed notice on BAS of the impending tax sale of the subject property because the Commissioner did not receive a return receipt for its August 2021 Notice and knew that the notice purportedly had been left in a mail room, unsigned for by any person.

53. The Commissioner knew it had not completed notice on BAS of the impending tax sale of the subject property because the June 2022 Notice was returned to the Commissioner undelivered.

54. Despite knowing that it had not completed notice on BAS of the impending tax sale of the subject property, the Commissioner took no additional reasonable steps to ensure notice to BAS and therefore violated BAS's due process rights under the

Fourteenth Amendment of the United States Constitution.

55. The Commissioner violated the Fifth and Fourteenth Amendments by depriving BAS of due process when it failed to take the steps required by law to notify BAS of the impending tax sale.

56. As a result of the Commissioner's violations, BAS suffered damages in the amount of the fair market value of the Property as of the day of the taking.

57. BAS is entitled to the fair market value of the Property as of the day of the taking.

58. BAS is entitled to costs and attorneys' fees. *See* 42 U.S.C. § 1983.

COUNT III – VIOLATION OF FIFTH AMENDMENT TAKINGS CLAUSE

59. Paragraphs 1 through 58 are incorporated herein by reference as if set forth word for word.

60. The Fifth Amendment of the United States Constitution states that private property shall not be taken for public use without just compensation.

61. BAS, a private entity, owned the Property.

62. The Commissioner took the Property when it certified the Property for non-payment of taxes and sold it at a public tax auction without due process.

63. The Commissioner did not compensate BAS justly when it took BAS's private property.

64. By taking BAS's private property without just compensation, the Commissioner violated the Fifth Amendment's taking clause.

65. BAS is entitled to the fair market value of the Property as of the day of the taking.

COUNT IV – VIOLATION OF ARTICLE 2 OF THE ARKANSAS CONSTITUTION

66. Paragraphs 1 through 65 are incorporated herein by reference as if set forth word for word.

67. Article 2, Section 22 of the Arkansas Constitution provides that "[t]he right of property is before and higher than any constitutional sanction; and private property shall not be taken, appropriated or damaged for public use, without just compensation therefore."

68. The Commissioner took the Property when it certified the Property for non-payment of taxes and sold it at a public auction without due process.

69. The Commissioner did not compensate justly BAS when it took BAS's private property.

70. By taking BAS's private property without just compensation, the Commissioner violated Article 2, Section 22 of the Arkansas Constitution.

71. BAS is entitled to the fair market value of the Property as of the day of the taking.

JURY TRIAL

72. BAS demands a jury trial on all issues triable before a jury.

WHEREFORE, BAS, LLC prays that the Court enter an order setting aside the tax sale and limited warranty deed issued by Tommy Land, Commissioner of State Lands, to Parcel Strategies, LLC and Banyan Capital Investments, LLC, finding a violation of BAS's due process rights under the Fifth and Fourteenth Amendments of the United States Constitution, finding that the Commissioner effected a taking of BAS's property in violation of the Fifth Amendment of

the United States Constitution and Article 2 of the Arkansas Constitution, and awarding BAS LLC its costs, attorneys fees and all other just and equitable relief to which BAS is entitled.

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* * *

IN THE CIRCUIT COURT OF GREENE COUNTY, ARKANSAS

SECOND DIVISION

BAS, LLC	PLAINTIFF
v.	
CASE NO. 28CV-22-388	
TOMMY LAND, IN HIS OFFICIAL CAPACITY AS ARKANSAS COMMISSIONER OF STATE LANDS	DEFENDANT
PARCEL STRATEGIES, LLC, and BANYAN CAPITAL INVESTMENTS, LLC	INTERVENORS

30(b)(6) DEPOSITION OF:

DR. GARY SOLNIT

(Taken July 19, 2024, at 9:05 a.m.)

[Excerpts of Pages 653-55, 659, 664, 679, 682, and 717-18 of the Record on Appeal.]

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ALSO PRESENT:

Dr. Jay Solnit, Corporate Representative,
BAS, LLC

* * *

EXAMINATION

BY MR. CARDIS:

* * *

Q And with respect to BAS, LLC, what is your relationship to that entity?

A Well, I am 50 percent owner of BAS, LLC, with my brother, Jay, who's here. We're partners.

Q And the BAS, is that an acronym for anything specific or just initials?

A It is an acronym. It's -- well, actually it's my mother's initials, Barbara Arlene Solnit.

Q And what was the reason for forming that entity, sir?

A We formed the entity to help my mother with her inheritance. And when she gave us power of attorney in 2009, we decided -- and since her health was failing, we decided that we needed to make her money work for her to try to help her with her health needs and her care.

* * *

Q What actions did BAS, LLC, take to correct the address that was on that title information?

A Unfortunately, nothing after that, or this whole mess wouldn't have gotten this far.

Q Did BAS, LLC, contact any government official in Greene County, Arkansas, to change the address?

A No, BAS, LLC, did not contact the county.

Q Can you describe what items of mail were received at the 3735 Winford Drive from Greene County, Arkansas?

A Sometime in early 2017, I did receive a property tax statement at 3735.

Q And after receiving that 2017 property tax statement, what action did you take?

A I immediately forwarded it to my lawyer at the time, asking him if Dollar General was responsible for paying the property taxes, as we had been led to believe, and nothing ever happened after that.

Q What actions did you take to follow up with your attorney on the issue?

A After that email, I did not follow up with my attorney.

* * *

Q With respect to the Paragould property where the Dollar General store is located, could you explain how BAS became aware of that potential investment?

A Yes. We hired a commercial broker from Caldwell Banker named Art Pfefferman, P-F-E-F-F-E-R-M-A-N, and he found this Dollar General in Paragould for us.

Q Were you specifically searching the Paragould, Arkansas, market when you found that investment?

A No, we were not specifically searching Arkansas, we were searching all over the United States for something that we could afford.

Q And what about that particular property did BAS find attractive for investment purposes?

A Well, the price, number one, was what we could afford to buy, and the location being on a busy street.

Other than that, we trusted our broker to help us make these decisions.

Q Was the presence of the Dollar General store on that Paragould property a factor also that made the property attractive for investment?

A Yes, it was the Dollar General that made it attractive.

* * *

Q I believe in your previous -- in your testimony a little bit earlier, you stated that the address of 3735 was mistakenly recorded by your closing agent, is that correct, even though you had asked for it not to be; is that correct?

A Yes.

Q If I understand that.

A I believe that the address --

Q Can you explain that a little bit?

A I'm sorry, I didn't get the last part of your --

Q I said, Can you explain what you meant by that?

A Yes. The address, the 3735 address was recorded by the title agent, and I don't know how he decided to use that address. And when I saw that that address was recorded on title, I asked for it to be changed by emailing my lawyer.

No.

In The

Supreme Court of the United States

BAS, LLC,

Petitioner,

v.

TOMMY LAND, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF STATE LANDS FOR THE STATE OF ARKANSAS,

Respondent.

On Petition For A Writ Of Certiorari To The Supreme Court of Arkansas

CERTIFICATE OF COMPLIANCE

As required by Supreme Court Rule 33.1(h), I certify that the PETITION FOR A WRIT OF CERTIORARI contains 7,509 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on February 2, 2026.

s/ Robert H. Thomas
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Counsel for Petitioner

AFFIDAVIT OF SERVICE

SUPREME COURT OF THE UNITED STATES

No. ___

----------X

BAS, LLC,

Petitioner,

v.

TOMMY LAND, IN HIS OFFICIAL CAPACITY AS COMMISSIONER OF STATE LANDS FOR THE STATE OF ARKANSAS,

Respondent.

----------X

STATE OF NEW YORK)

COUNTY OF NEW YORK)

I, Julie Connor, being duly sworn according to law and being over the age of 18, upon my oath depose and say that:

I am retained by Counsel of Record for *Petitioner*.

That on the 2nd day of February, 2026, I served the within *Petition for a Writ of Certiorari* in the above-captioned matter upon:

Tim Griffin, Attorney General of Arkansas
Lisa Wiedower, Assistant Attorney General
Julius J. Gerard, Assistant Attorney General
Office of the Arkansas Attorney General
323 Center Street, Suite 200
Little Rock, Arkansas 72201
Lisa.weidower@arkansasag.gov
Julius.gerard@arkansasag.gov
Counsel for Respondent Tommy Land

by sending three copies of same, addressed to each individual respectively, through U.S.P.S. Priority Mail. An electronic version was also served by email to each individual.

That on the same date as above, I sent to this Court forty copies of the within *Petition for a Writ of Certiorari* and three hundred dollar filing fee

check through the Next Day Federal Express, postage prepaid. In addition, the brief has been submitted through the Court's electronic filing system.

All parties required to be served have been served.

I declare under penalty of perjury that the foregoing is true and correct.

Executed on this 2nd day of February, 2026.

Julie Connor

_____

Julie Connor

Sworn to and subscribed before me
this 2nd day of February, 2026.

Mariana Braylovskiy

MARIANA BRAYLOVSKIY
Notary Public State of New York
No. 01BR6004935
Qualified in Richmond County
Commission Expires March 30, 2026