IN THE
SUPREME COURT OF VIRGINIA
AT RICHMOND

Record No. 260298

SHARON MORGAN,

Petitioner-Appellant,

v.

CITY OF NORFOLK,

Respondent-Appellee.

AMENDED MOTION OF PACIFIC LEGAL FOUNDATION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF IN SUPPORT OF PETITIONER-APPELLANT SHARON MORGAN

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Counsel for Amicus Curiae
Pacific Legal Foundation

Amicus curiae Pacific Legal Foundation (PLF) moves this Honorable Court pursuant to Va. S. Ct. R. 5:30(c) to grant leave to submit a brief *amicus curiae*.[1] In support of this motion, PLF states as follows:

1. PLF's brief is in support of the Petitioner-Appellant Sharon Morgan.

2. PLF has sought to obtain the consent of all parties.

3. The Petitioner-Appellant has consented to the filing of this brief. The Respondent-Appellee takes no position and does not intend to file an opposition to this motion.

4. A copy of PLF's proposed *amicus* brief is attached to this motion.

5. Founded in California in 1973—and now with offices in Arlington, Virginia; Sacramento, California; and Palm Beach Gardens, Florida—PLF is widely regarded as the most experienced and successful nonprofit public-interest law firm of its kind and has thousands of supporters nationwide.

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[1] *Amicus curiae* files this Amended motion to reflect in amended paragraph 3 that the Respondent has communicated to amicus that it takes no position on this motion and does not anticipate filing an opposition.

6. PLF advances the principles of individual rights and limited government by advocating *pro bono publico* in state and federal courts. PLF is particularly known for its defense of the civil right of private property ownership, including decades of advocacy in the United States Supreme Court on behalf of private property owners. *See, e.g.*, *Sheetz v. Cnty. of El Dorado*, 601 U.S. 267 (2024); *Tyler v. Hennepin Cnty.*, 598 U.S. 631 (2023); *Sackett v. E.P.A.*, 598 U.S. 651 (2023); *Wilkins v. United States*, 598 U.S. 152 (2023); *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021); *Knick v. Twp. of Scott*, 588 U.S. 180 (2019); *U.S. Army Corps of Eng'rs v. Hawkes Co.*, 578 U.S. 590 (2016); *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595 (2013); *Sackett v. E.P.A.*, 566 U.S. 120 (2012); *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987).

7. Moreover, PLF has substantial experience as counsel for property owners and as amicus curiae in property rights, inverse condemnation, and eminent domain cases in state courts across the nation. *See*, *e.g.*, *Shands v. City of Marathon*, 411 So. 3d 452 (Fla. 3d Dist. Ct. App. 2025) (en banc), *review denied*, No. SC2025-0833, 2025 WL 3497005 (Fla. Dec. 5, 2025) (counsel: city downzoned land and is liable for inverse condemnation taking); *Town of Apex v. Rubin*, 388 N.C. 236,

919 S.E.2d 111 (2025) (*amicus*: when exercise of eminent domain was for a private purpose and taking is invalid, title and possession revest with the original owner); *Hawaii v. Williams*, 154 Haw. 107, 546 P.3d 1221 (Ct. App. 2024) (counsel: property owner defending an eminent domain taking is entitled to introduce evidence of the property's ability to generate income in the just compensation phase); *Coal. for Fairness in SoHo & NoHo, Inc. v. City of New York*, No. 112, ___ N.E.3d ___, 2026 WL 88133 (N.Y. Jan. 13, 2026) (counsel: arguing a municipal land use exaction violates the Fifth Amendment); *Jackson v. Southfield Neighborhood Revitalization Initiative*, No. 166320, ___ N.W.3d ___, 2025 WL 1959046 (Mich. July 16, 2025) (*amicus*: government violates Michigan takings clause by transferring to third parties excess funds after a tax foreclosure sale); *Walton v. Neskowin Reg'l Sanitary Auth.*, 372 Or. 331, 550 P.3d 1 (2024) (*amicus*: statute of limitations in inverse condemnation actions); *Cao v. PFP Dorsey Investments, LLC*, 257 Ariz. 109, 545 P.3d 459 (2024) (*amicus*: state constitutional provision prohibiting the taking of private property for private use provides significantly greater protection against takings for private use than does the federal Constitution.); *Leone v. Cnty. of Maui*, 128 Haw. 183, 195, 284

P.3d 956, 968 (Ct. App. 2012) (*amicus*: to ripen a de facto takings claim the owner need not seek a change in a land use general plan).

8. The Petition is of keen interest to PLF because it seeks this Court's review of two constitutional issues of fundamental importance to property owners who are entitled to just compensation when the government either (1) sues an owner in an eminent domain lawsuit, or (2) forces the owner to seek inverse condemnation relief because the government has taken property but has not instituted eminent domain.

9. The first issue is the foundational indemnity principle that when the government takes less than the entirety of the owner's property, the condemnor is obligated to pay for the losses which result from the severance of the taken property from the owner's remaining land (what Virginia calls "residue"). The Virginia Constitution expressly recognizes the obligation to pay, as part of just compensation, "damages to the residue" caused by a taking. *See* Va. Const. art. I, § 11 ("Just compensation shall be no less than … the value of the property taken … and damages to the residue caused by the taking.").

10. The second issue is the principle that calculation of just compensation is a question of fact traditionally and historically reserved to the jury and should not be lightly set aside.

11. PLF believes its experience in takings and just compensation cases, and its national perspective, would aid this Court's deliberations.

For the foregoing reasons, *amicus* respectfully requests that the Court grant its motion to file a brief *amicus curiae*.

DATED: April 7, 2026.

Respectfully submitted,

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CERTIFICATE OF SERVICE

I certify that on April 7, 2026, a true copy of the Amended Motion of Pacific Legal Foundation for Leave to File *Amicus Curiae* Brief in Support of Petitioner-Appellant Sharon Morgan was filed with the Clerk of the Supreme Court of Virginia using the Court's VACES system, and a copy was served on counsel for all parties by email pursuant to Rules 1:12 and 5:1B of the Rules of the Supreme Court of Virginia.

/s/ Laura D'Agostino
LAURA D'AGOSTINO

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RULE 5:30(e)(2) STATEMENT

Amicus curiae Pacific Legal Foundation (PLF) submits this brief in support of the Petitioner-Appellant Sharon Morgan. Pursuant to the Rules of the Supreme Court of Virginia 5:30(e)(2), PLF states:

1. No party's counsel authored the brief in whole or in part.

2. No party, nor a party's counsel, contributed money that was intended to fund preparing or submitting the brief.

3. No person—other than *amicus curiae*, its members, or its counsel—contributed money that was intended to fund preparing or submitting the brief.

INTEREST OF *AMICUS CURIAE*

Founded in California in 1973—and now with offices in Arlington, Virginia; Sacramento, California; and Palm Beach Gardens, Florida—PLF is widely regarded as the most experienced and successful nonprofit public-interest law firm of its kind and has thousands of supporters nationwide. PLF advances the principles of individual rights and limited government by advocating *pro bono publico* in state and federal courts. PLF is particularly known for its defense of the civil right of private property ownership, including decades of advocacy in the United States

Supreme Court on behalf of private property owners. *See*, *e.g.*, *Sheetz v. Cnty. of El Dorado*, 601 U.S. 267 (2024); *Tyler v. Hennepin Cnty.*, 598 U.S. 631 (2023); *Sackett v. E.P.A.*, 598 U.S. 651 (2023); *Wilkins v. United States*, 598 U.S. 152 (2023); *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021); *Knick v. Twp. of Scott*, 588 U.S. 180 (2019); *U.S. Army Corps of Eng'rs v. Hawkes Co.*, 578 U.S. 590 (2016); *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595 (2013); *Sackett v. E.P.A.*, 566 U.S. 120 (2012); *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987).

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property owners who are entitled to just compensation when the government either (1) sues an owner in an eminent domain lawsuit, or (2) forces the owner to seek inverse condemnation relief because the government has taken property but has not instituted eminent domain.

The first issue is the foundational indemnity principle that when the government takes less than the entirety of the owner's property, the condemnor is obligated to pay for the losses which result from the severance of the taken property from the owner's remaining land (what Virginia calls "residue"). The Virginia Constitution expressly recognizes the obligation to pay, as part of just compensation, "damages to the residue" caused by a taking. *See* Va. Const. art. I, § 11 ("Just compensation shall be no less than … the value of the property taken … and damages to the residue caused by the taking.").

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PLF believes its experience in takings and just compensation cases, and its national perspective, would aid this Court's deliberations.

FACTS

After the City of Norfolk invaded the property of Sharon Morgan—a service-connected disabled Coast Guard veteran—and destroyed and physically removed a portion of the handicapped ramp to her home as part of its sewer project, the circuit court held the City had taken her private property and was liable for just compensation under the "damaged or taken" clause of the Virginia Constitution. Va. Const. art. I, § 11 ("No private property shall be *damaged or taken* for public use without just compensation to the owner thereof.") (emphasis added). *See* Petition for Appeal at 5 ("The trial court found that the City violated Section 11's Takings Clause by taking part of her handicap-access ramp for six months during Phase 3A. R. 569–71, 1322, 1339–1340."). However, based on the circuit court's striking of evidence of noise and vibration causing damage to her home, the court also held that that the City was not liable for a separate "damaging" of her property—only a taking. *Id*.

After holding that the City was liable for a taking (the usual province of the court), the next step was to calculate the amount of just compensation which the City owed for the taking (an issue assigned to the jury under Virginia law). But the circuit court declined to impanel a

just compensation jury. It concluded that it had already determined that Morgan's property was not damaged. Thus, even though the Virginia Constitution expressly defines "just compensation" as including "damages to the residue caused by the taking," Va. Const. art. I, § 11, cl. 8 ("Just compensation shall be no less than the value of the property taken … and damages to the residue caused by the taking."), the circuit court prohibited Morgan from introducing evidence of the damages to her residue property (her home) caused by the City's taking of her handicapped ramp, and limited evidence to the bare rental value of the property taken (a temporary taking of a few square feet). The court concluded that its earlier liability determination that the City had not committed a constitutional "damaging" conclusively resolved the question of whether the City owed her just compensation for the damage the taking caused to her residue property, her home.

The court of appeals affirmed. *Morgan v. City of Norfolk*, 86 Va. App. 535, 924 S.E.2d 684 (2026). Although the court correctly recognized that a jury is charged with calculating just compensation and that just compensation in partial takings includes damages to the residue, it held that the circuit court had already determined that Morgan's residue

property was not damaged by the taking when it decided the City was not liable for a constitutional damaging. *Id*. at 550 n.4, 924 S.E.2d at 691 n.4 ("Rather, the circuit court simply limited Gruelle's testimony to the court's finding at the liability trial that Morgan could only seek damages for the fair rental value of the 15 square foot area for 6 months.").[1] The court held that the trial judge had already resolved the question of damages. Consequently, the court of appeals also rejected Morgan's demand that a jury determine all issues related to just compensation. *Id*. ("By allowing the proffered testimony, a jury would be permitted to consider just compensation outside the bounds of the finding from the trial on liability and, in essence, supplant the circuit court's authority to determine the scope of the taking.").

ARGUMENT

When the government invades and destroys a portion of a homeowner's handicapped ramp and the court concludes it is liable for a taking, the Virginia Constitution requires payment of just compensation

[1] The court of appeals apparently conflated the term "damages" as used in the general remedial sense with the just compensation as defined in the Virginia Constitution: "Therefore, the damages recoverable would be the fair rental value of the 15 square foot area for six months." *Morgan*, 86 Va. App. at 549, 924 S.E.2d at 691.

for the loss of the owner's property, which includes "damages to the residue caused by the taking." Yet the courts below denied Morgan that fundamental right, and her right to have the just compensation owed by the City determined by a jury. Left unreviewed, the court of appeals' ruling will create unnecessary confusion where the plain text of the Constitution is clear: when property has been partially taken (as the circuit court held here), the just compensation owed includes damages to the residue, even where the court has determined there's been no constitutional "damaging." Va. Const. art. I, § 11, cl. 8 ("Just compensation shall be no less than the value of the property taken … and damages to the residue caused by the taking."). This Court's review is urgently needed to correct two fundamental errors.

1. The court of appeals' first critical error was concluding that the circuit court's determination that the City was not liable for a constitutional "damaging" also meant that the City's partial taking had not caused "damage to the residue." The court of appeals wrongly rejected Morgan's argument that constitutional damagings (a question of liability) are not the same as "damages to the residue caused by the taking (a question of remedy).

2. The court's second error flowed from the first, and had the severest of consequences. History and tradition demonstrate the central democratic importance of the jury in calculating how much just compensation is owed in both eminent domain and inverse takings, and for centuries, juries have occupied the central role in determining just compensation in both American and English law. The court's refusal to consider evidence of damage to the residue caused by the taking resulted in Morgan being denied her fundamental right to have a jury make that determination.

I. Liability for "Damagings" Is Not the Same as "Residue Damages" in Just Compensation

This case involves just compensation for a taking, not a damaging. Virginia's Constitution, similar to the constitutions of 26 other states, obligates the government to provide just compensation when its actions have "damaged or taken" private property for public use:

> That the General Assembly shall pass no law whereby private property, the right to which is fundamental, shall be *damaged or taken* except for public use. No private property shall be *damaged or taken* for public use without just compensation to the owner thereof.

Va. Const. art. I, § 11, cl. 7 (emphasis added). The circuit court concluded that the City must provide just compensation because its actions resulted

in a taking of a portion of Morgan's private property. *See* Petition for Appeal at 5 ("The trial court found that the City violated Section 11's Takings Clause by taking part of her handicap-access ramp for six months during Phase 3A. R. 569-71, 1322, 1339-1340."). But based on the court's striking of evidence of noise and vibration causing damage to her home, the court also held that the City had not violated the "damaged for public use" provision. *Id.*

The people of Virginia added the damagings provision to their constitution in 1902. *See* Maureen E. Brady, *The Damagings Clauses*, 104 Va. L. Rev. 341, 358 & n.82 (2018) (citing Va. Const. of 1902, art. IV, § 58, which provided that the legislature "shall not enact any law whereby private property shall be taken or damaged for public uses, without just compensation"). This and similar damagings clauses were added to state constitutions "to repair deficiencies in ordinary takings law[.]" *Id.* at 344. These deficiencies included areas where a wide range of significant government-caused harms to property did not adequately fit into the "takings" liability framework, leaving what Professor Brady labels a "gap in condemnation law." *Id.* at 354. Professor Brady writes:

> Though state and federal prohibitions on physical and regulatory takings might seem to cover the gamut of

> potentially compensable government acts, a category of government harm to property is unaddressed by these two categories. Indeed, there is a third category of government activity that has periodically raised compensability issues: actions by the government falling short of technical appropriation, occupation, or regulation, but which nonetheless diminish the value or usefulness of property or functionally oust property holders.

Id. at 351. The prior limitation of just compensation only for "takings" was inadequate and was not fully indemnifying owners for the loss of their property rights caused by the government. *See* Carl H. Davis, *Constitutional Provisions Against Damaging Private Property*, 8 Va. L. Reg. 525, 526 (1902) ("The old sections provided, in effect, that private property should not be 'taken' without just compensation. Since these words were inserted for the protection of the citizen, one would not expect that they would be construed strictly against the citizen. Yet such was the result.").

The gap which spurred the addition of the first damagings clauses was the result of state courts repeatedly holding that the loss of access to adjacent streets due to grading and other improvements did not qualify as a "taking" if there was no physical government trespass on the property. Other gaps included limited takings liability for impacts of aviation operations on the use and enjoyment of property. *See* Brady, *The*

Damagings Clauses, 104 Va. L. Rev. at 352–53 (noting *United States v. Causby*, 328 U.S. 256, 256–66 (1946), which limited takings liability to instances where actual invasions of airspace caused a nuisance-like disruptions to the owner, but left nearby owners who were equally impacted by aircraft operations, but were not subject to direct overflights, with no remedy). Similarly, no takings liability existed for damages suffered by property owners as the result of the regrading of roads to allow use by horses, streetcars, and eventually automobiles. *Id*. at 354.

Thus, when the people of Virginia added the damaging clause to their state constitution, they were making clear that even if not "takings," government activities which merely damaged property would separately obligate the government to provide compensation, even without a physical taking. *See generally Tidewater Ry. Co. v. Shartzer*, 107 Va. 562, 566, 59 S.E. 407, 408 (1907) ("it cannot be doubted that by the change of the law in the Constitution and statute it was plainly intended to enlarge the right to compensation"). In short, Virginia's damagings clause was meant to expand liability beyond takings to also impose liability for situations where government injures property, but there has been no taking:

> Certainly no one denied that the minimum purpose of the constitutional changes was to allow recovery for some types of previously uncompensated losses. Moreover, in view of the express addition of the word "damage" the courts could now properly ignore earlier restrictive precedents. No longer was it necessary to establish a "taking."

Emerson G. Spies & John C. McCoid, II, *Recovery of Consequential Damages in Eminent Domain*, 48 Va. L. Rev. 437, 446–47 (1962).

If that was not clear enough, the drafters of the Virginia damagings provision stated the clause's purpose, and confirmed that the intent was to ensure that public projects fully indemnify property owners for damagings as well as takings:

> [Public works] should not be done at the expense of the individual. If it is necessary for progress that great works should go on, then let the burden be borne by the entire community, or let the burden be borne by the corporation which is seeking for its own private gain to take or to injury or to destroy or to damage the property of the individual.

1 *Debates of the Constitutional Convention of Virginia 1901-1902*, at 715, *quoted in* Spies & McCoid, *Recovery of Consequential Damages*, 48 Va. L. Rev. at 446 & n.39. The drafters were very clear that "damagings" liability was distinct from—and in addition to—the government's preexisting liability for "takings":

> What we wish to do is insure the right of the individual, when his property is damaged, to be compensated just as by the

> Constitution of 1829–30 guaranteed his right to be compensated for property taken.

Id. at 724. More recently, members of this Court have recognized the distinction between takings and damagings. As Professor Brady notes:

> In an oral argument on a takings issue held in April 2017, a Supreme Court of Virginia justice noted "the big difference [between the federal and the Virginia state takings provisions] is the word damage. That's a huge conceptual difference."

Brady, *The Damagings Clauses*, 104 Va. L. Rev. at 345 & n.8 (citing Oral Argument at 27:32, *Palmer v. Atlantic Coast Pipeline, LLC*, 801 S.E.2d 414 (Va. 2017) (No. 160630)).

Here, after striking evidence of noise and vibration from the City's sewer project, the circuit court held there was no constitutional damaging. Although no doubt disappointing to Morgan, by basing its conclusion on things like noise and vibration, the circuit court seems to have considered the correct factors which courts evaluate to determine whether the government action results in a damaging. *See, e.g.*, *Shartzer*, 107 Va. at 564, 59 S.E. at 408 (a damage claim "for annoyance from smoke, noise, dust, cinders, and danger from fire resulting from the construction and operation of the road"); *Richmeade, L.P. v. City of Richmond*, 267 Va. 598, 602, 594 S.E.2d 606, 609 (2004) ("To take or

damage property in the constitutional sense does not require that the sovereign actually invade or disturb the property. Taking or damaging property in the constitutional sense means that the governmental action adversely affects the landowner's ability to exercise a right connected to the property."); *Swift & Co. v. City of Newport News*, 105 Va. 108, 120, 52 S.E. 821, 826 (1906) (if property suffers impacts caused by a change in adjacent street grading even "where no part of the property was taken," the owner is entitled to just compensation under the "new Constitution").

But more importantly, the circuit court also concluded that by invading Morgan's property and physically destroying part of her handicapped ramp, the City was liable for a taking. That alone should have compelled a determination of the amount of just compensation owed by the City for that taking, controlled by the express terms of the Virginia Constitution which requires a calculation of "the value of the property taken" and, critically for this case, "*damages to the residue caused by the taking*." Va. Const. art. I, § 11 (emphasis added). That calculation would be accomplished by a jury comparing the value of the property before the City's taking, with its value after. *Appalachian Elec. Power Co. v. Gorman*, 191 Va. 344, 353, 61 S.E.2d 33, 37 (1950) ("The true test of

damages to the residue of the land not taken is the difference in value before and immediately after the taking, and in ascertaining such damages there may be considered every circumstance, present or future, which affects its then value.").

In short, the damagings provision deals with liability. By contrast, the term "damages" as used in the Virginia Constitution's definition of "just compensation" for partial takings relates to how the remedy of just compensation is determined where government action has either taken—or damaged—private property. *See* Va. Const. art. I, § 11 (just compensation must include "damages to the residue caused by the taking"). Thus, the lower courts should not have prohibited presentation to the jury of evidence of damages to Morgan's remaining property caused by the severance of a portion, simply because the circuit court earlier determined that the City was not liable for a constitutional damaging. This Court should grant the Petition and make clear the distinction between these two constitutional provisions. Once the circuit court held that the City was liable for partially taking Morgan's property, the plain language of the Virginia Constitution entitled her to introduce all evidence related to just compensation.

II. For Centuries, Juries Have Determined Just Compensation, Including Damage to the Residue

The lower courts' conflation of damagings liability with residue damages as part of takings just compensation had additional—and even more severe—consequences. By concluding that the circuit court's "no damaging" liability ruling conclusively determined that Morgan had suffered no damage to her residue property as a result of the City's taking, the court of appeals took away resolution of just compensation from the jury, which has been charged with that question for thousands of years. *See* Wanling Su, *What is Just Compensation?*, 105 Va. L. Rev. 1483, 1498 (2019) ("The first recorded use of juries to value property in England dates to 1086 when William the Conqueror commissioned what later became known as the Domesday Book. It surveyed the value of lands all across England relying entirely on jury assessments.") (footnote omitted). As the "democratic branch of the judiciary power,"[2] juries

[2] *See id.* at 1505 & n.118 (citing *Essays by a Farmer No. IV* (Mar. 21, 1788), *in* 5 *The Complete Anti-Federalist* 36, 38 (Herbert J. Storing ed., 1981) (referring to juries as "the democratic branch of the judiciary power" (emphasis omitted)); 1 Alexis De Tocqueville, *Democracy in America* 293–94 (Vintage ed. 1945) ("The jury system as it is understood in America appears to me to be as direct and as extreme a consequence of the sovereignty of the people as universal suffrage."); *Letter from Thomas Jefferson to David Humphreys* (Mar. 18, 1789) (on file with the

deciding what compensation is "just" continue to serve as the essential protection against government overreach in an area where judicial review of the validity of government's actions is extremely limited. *See*, *e.g.*, *Kelo v. City of New London*, 545 U.S. 469, 489–90 (2005) (limited judicial review of government power to take property by eminent domain); *Vill. of Euclid v. Ambler Realty Co.*, 272 U.S. 365, 388 (1926) (limited judicial review of government power to regulate property).

Consequently, it should not be surprising that forty-nine states, Virginia included, require just compensation to be determined by a jury, either as a matter of the state constitution, a state statute, or a state court's decisional law. *See*, *e.g.*, Va. Const. art. I, § 11 (in property disputes, the jury is preferable, and "ought to be held sacred"); Cal. Const. art. I, § 19(a) ("Private property may be taken or damaged for a public use and only when just compensation, ascertained by a jury unless waived, has first been paid to, or into court for, the owner."); Md. Const. art. 3, § 40 ("The General Assembly shall enact no Law authorizing

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Library of Congress, Manuscript Division, The Thomas Jefferson Papers at the Library of Congress, Series 1) (referring to juries as "trials by the people themselves")).

private property to be taken for public use without just compensation, as agreed upon between the parties, or awarded by a Jury, being first paid or tendered to the party entitled to such compensation."); Va. Code § 25.1-220 ("The issue of just compensation shall be determined by a commission or a jury"); Wis. Stat. § 32.05(10)(a) ("It shall be tried by jury unless waived by both plaintiff and defendant."); *Hous. Fin. & Dev. Corp. v. Ferguson*, 91 Haw. 81, 89, 979 P.2d 1107, 1115 (1999) ("Based on the established common-law convention of this jurisdiction at the time of the adoption of the state constitution, we hold that, as a general matter, a right to jury trial exists in state eminent domain proceedings.").[3]

American states requiring juries for just compensation did not arise organically or in a vacuum, but were the natural progression of English common law after it crossed the Atlantic and landed at Jamestown in 1607. As Professor Su explains in detail, the right to a jury determination

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[3] New York is the sole outlier not recognizing the right to a just compensation jury, despite that approach's dubious constitutional grounding. *See* Su, *What is Just Compensation?*, 105 Va. L. Rev. at 1490–91 ("Historical records cast doubt on the constitutionality of [the] practice [of replacing just compensation juries with government-appointed commissions]. The Seventh Amendment preserves the right to a jury as it existed under English common law when the Amendment was adopted in 1791.") (footnote omitted).

of just compensation for takings has a long history, beginning in the United States with Virginia's reliance on the common law writ of "*ad quod damnum*" (a writ calling on the jury to assess compensation for takings). *See* Su, *What is Just Compensation?*, 105 Va. L. Rev. at 1494–95 (citing *Att'y Gen. v. Turpin*, 13 Va. (3 Hen. & M.) 548, 548 (1809)). Professor Su also notes that "[t]he concept of ad quod damnum has been used throughout English history." *Id*. at 1497.

The paradigmatic English decision recognizing that juries determine compensation for takings—including *de facto* takings—is *Attorney-General v. De Keyser's Royal Hotel, Ltd*., [1920] AC 508 (HL), where the House of Lords concluded (resolving a claim we might label "inverse condemnation") that the Crown may not seize possession of property "in connection with the defence of the realm" (a hotel to house Royal Air Force officers during World War I), without paying compensation for the use and occupation. What is notable about *De Keyser's Hotel* for the case at bar is the House of Lords' conclusion that a jury determines the compensation owed by the Crown. As Professor Su writes:

> Speaking of a 1708 statute, the House of Lords observed the long history of juries assessing compensation in takings: "It is

> somewhat significant that in the first statute of all dealing with the acquisition of land, we have a reference to the usual methods that had been taken to prevent extortionate demands, and the usual methods are said to be a valuation by jury.

Su, *What is Just Compensation?*, 105 Va. L. Rev. at 1497 (footnotes and citations omitted).

In accordance with this extensive tradition and history, the Virginia Constitution recognizes that the jury plays a "sacred" role in property cases:

> That in controversies respecting property, and in suits between man and man, trial by jury is preferable to any other, and ought to be held sacred. The General Assembly may limit the number of jurors for civil cases in courts of record to not less than five.

Va. Const. art. I, § 11. The General Assembly also emphasizes the central role of the jury in determining just compensation for takings:

> The issue of just compensation shall be determined by a commission or a jury, upon a timely election made by an owner as provided in § 25.1-213.

Va. Code § 25.1-220 (entitled "Who determines issue of just compensation"). The statute's use of "shall" reflects the General Assembly's confirmation that the jury's role in determining just compensation must be jealously guarded. *See Bland-Henderson v.*

Commonwealth, 303 Va. 211, 218, 902 S.E.2d 51, 55 (2024) ("a 'shall' command in a statute always means 'shall,' not 'may'") (quoting *Rickman v. Commonwealth*, 294 Va. 531, 537, 808 S.E.2d 395 (2017)). *See also PKO Ventures, LLC v. Norfolk Redevelopment & Hous. Auth.*, 286 Va. 174, 182, 747 S.E.2d 826, 830 (2013) ("in the construction of statutes conferring the power of eminent domain, every reasonable doubt is to be [resolved] adversely to th[at] right") (quoting *School Board v. Alexander*, 126 Va. 407, 413, 101 S.E. 349, 351 (1919)).

Neither Virginia's Constitution nor the jury statute makes any distinction between just compensation for eminent domain takings and just compensation for inverse takings. This Court has confirmed that there is no principled distinction between how compensation is measured in eminent domain, and how it is measured in inverse condemnation cases. *See AGCS Marine Ins. Co. v. Arlington Cnty.*, 293 Va. 469, 477, 800 S.E.2d 159, 163 (2017) (detailing how *de facto* takings and inverse condemnation cases are functionally similar to eminent domain takings: "Virginia law recognizes inverse condemnation as a viable theory of recovery for *de facto* violations of Article I, Section 11 of the Constitution of Virginia. … Inverse condemnation arises out of the self-executing

nature of Article I, Section 11 and thus must be distinguished from common-law tort claims.") (citations omitted).

Consequently, once the circuit court determined the City had *de facto* taken Morgan's property but had not affirmatively exercised eminent domain, the balance of the case should have been handled exactly like a straight taking by eminent domain, with a jury impaneled to consider all evidence of the amount of just compensation the City owed, including damages to Morgan's remaining property rights. A property owner who is a condemnee in an eminent domain action instituted by the City would be entitled to present to the jury evidence of all elements of just compensation including damage to the residue property, instead of being trapped within a chaos of conflation between "damagings" with "residue damages." Morgan being subject to different treatment, based only on whether her property was taken by an affirmative exercise of eminent domain or by a breach of the government's implied promise to pay compensation whenever it takes property, would not be warranted. *See AGCS Marine*, 293 Va. at 476, 800 S.E.2d at 162 ("From ancient times, ad hoc seizures of property without direct legislative approval

were understood to violate the requirement of just compensation no less than outright legislative confiscations.") (citing Magna Carta, ch. 28).

Yet that false distinction and unequal treatment would be the natural consequence if the court of appeals' approach is not reviewed and revised to conform to the Constitution. Our long tradition of having juries determine just compensation cannot be casually tossed aside by concluding that a trial judge deciding whether the government's actions had "damaged" property is also, at the same time deciding that the owner's residue property has not been damaged either.

CONCLUSION

Amicus curiae PLF urges this Court to grant the Petition.

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Respectfully submitted,

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CERTIFICATE

Pursuant to Rule 5:17(i) of the Supreme Court of Virginia, I hereby certify the following:

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7. Pursuant to Rule 5:26(g) of the Supreme Court of Virginia, this *amicus curiae* brief contains 5,050 words, excluding those portions that by rule do not count toward the page limit.

8. A true copy of the foregoing was filed via VACES with the Clerk of the Supreme Court of Virginia and was served, via email, upon all counsel of record on this 7th day of April, 2026.

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