No. 18-1062

In The Supreme Court of the United States

LOVE TERMINAL PARTNERS, L.P., et al.,

Petitioners,

v.

UNITED STATES,

Respondent.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Federal Circuit

BRIEF OF *AMICUS CURIAE* THE INSTITUTE FOR JUSTICE IN SUPPORT OF PETITIONERS

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QUESTION PRESENTED

May the United States government absolve itself from liability under the Takings Clause for both a physical and regulatory taking when it passes legislation allowing an airline cartel to shut down and destroy a competing airport terminal?

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INTEREST OF THE *AMICUS*

The Institute for Justice is a nonprofit public interest law center committed to defending the essential foundations of a free society by securing greater protection for individual liberty. Central to that mission is combatting government schemes to give financial advantages to particular private parties and ensuring that condemning authorities provide just compensation for takings of private property.

This brief is co-authored with Professor Richard Epstein, one of the nation's leading authorities on constitutional law and the Takings Clause.[1]

INTRODUCTION

Against a backdrop of the government abusing its power by taking property from a potential competitor and handing it to a cartel, this petition for certiorari raises—in a novel eminent-domain context—important, unresolved questions about valuation of destroyed property that had been previously subject to legal restrictions. The issue involves a novel interaction of regulatory and physical takings law. The normal physical taking has the government taking possession of

[1] All parties have been notified of and consented to the filing of this brief. No party's counsel authored this brief in whole or in part, and no person or entity other than the *amicus* made a monetary contribution toward the preparation and submission of this brief. Many years ago, Professor Epstein worked on this case for the petitioners in the early stages of the litigation that precipitated this petition.

unencumbered private property or authorizing some private person to do so. The normal regulatory taking has the property owner left in possession of property but with it subject to legal restrictions. This case has elements of both. It starts with property that is subject to a restriction and ends with the property destroyed by government fiat. If the misguided decision of the Federal Circuit is allowed to stand, the scheme pulled off here will yield to its perpetrators a spectacular return: Valuable private property can first be regulated and then be taken without the government paying a cent in compensation.

The novel interaction of these two theories arises from the way the United States worked with a cartel to take and destroy petitioners' twelve gates at Love Field, Dallas, six of them at the state-of-the-art Lemmon Avenue terminal ("the Lemmon Avenue gates"). The Wright Amendment Reform Act of 2006, Pub. L. No. 109-352, 120 Stat. 2011 ("WARA"), codified the physical destruction of these gates, enacting a scheme—the Five-Party Agreement—among American Airlines, Southwest Airlines, the City of Dallas, the City of Fort Worth, and the Dallas Fort Worth Airport Authority. The maneuver was so audacious that the parties agreed that they would try it only with explicit Congressional blessing. On its face, the transaction was a taking of property from one private party to others so that they could then demolish it. *Contra Kelo v. City of New London*, 545 U.S. 469, 477 (2005) ("[The government] would no doubt be forbidden from taking

petitioners' land for the purpose of conferring a private benefit on a particular private party.").

This scheme was well understood to fleece airline travelers in and out of the area. Thus the Dallas Business Journal lamented that "[American and Southwest] are playing nicely together, to the exclusion of other potential competitors. Folks are starting to see the collusion for what it is. They smell a rat—and that's because this is one ratty proposal." Editorial, *Wright questions*, Dall. Bus. J., July 7, 2006. And further: "Is it right for the city of Dallas to poison a $100 million, private-sector sale of Love's old Legend Airlines terminal and to literally seize and bulldoze that terminal, just to keep a new airline from using it to compete against Southwest and American?" *Id.*[2]

As every observer could see, the deal created a cartel that divided the Dallas market between two carriers. Such cartels have long been condemned as per se violations of the antitrust laws because they raise prices, reduce output, and destroy social wealth. As this Court—providing a string citation dating to 1899—has put it:

> One of the classic examples of a per se violation of [the Sherman Antitrust Act] is an agreement between competitors at the same level of the market structure to allocate territories in order to minimize competition. Such

[2] WARA is still widely regarded as a travesty. *See, e.g.*, Barret V. Armbruster, *Wright is Still Wrong: The Wright Amendment Reform Act and Airline Competition at Dallas Love Field*, 81 J. Air L. & Com. 501 (2016).

> concerted action is usually termed a "horizontal" restraint. . . . This Court has reiterated time and time again that "(h)orizontal territorial limitations . . . are naked restraints of trade with no purpose except stifling of competition." *White Motor Co. v. United States*, 372 U.S. 253, 263 (1963). Such limitations are per se violations of the Sherman Act.

United States v. Topco Assocs., Inc., 405 U.S. 596, 608 (1972).

The scheme here is a paradigmatic example. Indeed, it is even worse. Normally cartels bind only the parties to them. But here the scheme was even more reprehensible because it involved an elaborate effort to use government power to destroy the one facility that might have provided some competition. The five parties well knew that they could pull off the scheme only if they could exclude new entry by third parties. That made petitioners' twelve gates a threat. To leave them standing, even if subject to legal restrictions, was not viable because political pressure would eventually reverse their forced idleness. Hence the Five-Party Agreement contemplated their immediate destruction.

Against this sordid anticompetitive background, the trial court thoroughly analyzed the case and awarded the petitioners $133.5 million for the taking of their gates. *Love Terminal Partners v. United States*, 126 Fed. Cl. 389 (2016). On appeal, the Federal Circuit reversed under both *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), and *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978).

Love Terminal Partners, L.P. v. United States, 889 F.3d 1331 (Fed. Cir. 2018) ("*LTP*"). Through a series of dubious doctrinal maneuvers, the Federal Circuit held that the destruction of these gates did not impose any financial liability on the United States, tersely "conclud[ing] that WARA did not constitute a regulatory or physical taking." *Id.* at 1336.

On regulatory takings, the Federal Circuit held that the gates had no economic value before the passage of WARA and thus had lost no value after the gates were shut down—hence, no compensation. That conclusion has to be wrong because the five parties would not trouble themselves with an elaborate scheme to destroy something worthless. It was precisely because the gates had economic value that they threatened the parties—their competitors—who responded by eliminating the threat, first by regulation and then by physical destruction. Nor is it credible to deny that the United States was responsible for the physical destruction of the gates when it acted in concert with the cartel to secure their destruction. The Federal Circuit erred on these interrelated questions of takings law.

Amicus urges the Court to grant the writ of certiorari to prevent the evisceration of takings law for the benefit of cartels. Allowing full compensation to aggrieved innocent parties will provide at least some protection against these machinations (or, in economic terms, some social protection against these antisocial actions).

SHORT SUMMARY OF FACTS

This dispute dates to 1978, when Congress repealed the Civil Aeronautics Act of 1938. The CAA had long hampered competition in the airline industry by allowing government to set routes and rates for all airline service in the United States. One major opponent of the repeal was Speaker of the House Jim Wright, a Congressman from Fort Worth. Wright wanted to protect the financial well-being of the Dallas/Fort Worth Airport, whose chief tenant, American Airlines, had over 80 percent of the local market. He also knew that, after the repeal, Southwest Airlines would finally enter the interstate market at Love Field and drain away landing fees that American and other carriers paid to DFW. To stop that, the Wright Amendment of 1979 stipulated that any flights from Love Field ending outside the four contiguous states (Arkansas, Louisiana, New Mexico, and Oklahoma) had to be flown in planes with no more than 56 seats. Interstate flights beyond the contiguous states were thus economically nonviable.[3]

But over time, pressure to open up Love Field to interstate travel began to grow. In 1997, the Shelby Amendment added Alabama, Kansas, and Mississippi to the list of exempt states. Missouri was added in 2005. And pressure increased sharply when Southwest

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[3] *See* International Air Transportation Competition Act of 1979, Pub. L. No. 96-192, § 29, 94 Stat. 35, 48–49 (1980). Much of the early history of the Wright Amendment is discussed in Richard A. Epstein, *The Wright Stuff—When is aviation reform not really reform?*, Regulation Magazine 8 (Spring 2007).

Airlines mounted its 2004 campaign to "Free Love Field." But soon after, Southwest reversed tactics and joined the Five-Party Agreement to convert the American Airlines monopoly over interstate air travel out of DFW into a duopoly, by allowing Southwest to expand its operations to the interstate market from Love Field. The Wright Amendment would be repealed. But for the deal to work, the parties had to neutralize the petitioners' twelve gates at Love Field. Because other airlines could compete if those gates were allowed to remain, the gates had to be physically destroyed.

To avoid the per se rule against cartelization, the five parties sought Congressional approval for the division of markets and the destruction of the gates—over the strong objection of antitrust experts in the Department of Justice. Congress agreed and legislated in WARA that:

> The city of Dallas, Texas, shall reduce as soon as practicable, the number of gates available for passenger air service at Love Field to no more than 20 gates. Thereafter, the number of gates available for such service shall not exceed a maximum of 20 gates.

WARA § 5(a). Because there were 32 gates at Love Field at the time, this meant the physical destruction of the Lemon Avenue gates. The congressional authorization insulated the five parties from antitrust liability under the *Noerr–Pennington* doctrine, which, in circumstances like this one, grants First Amendment protection to petitions for anticompetitive favors. *See Love Terminal Partners, L.P. v. City of Dallas*,

527 F. Supp. 2d 538, 545, 548 (N.D. Tex. 2007). But even the most aggressive application of that doctrine has not relieved the government of its obligation to provide just compensation for regulatory and physical takings.

SUMMARY OF THE ARGUMENT

Here both kinds of takings require close attention. On the regulatory takings issue, the Federal Circuit elevated the form of WARA over its substance. WARA should be understood for what it was—a repeal of the Wright Amendment that included the petitioners, whom the law did not and could not treat differently. Then, after the repeal, WARA ordered the Lemmon Avenue gates removed. That is a complete taking of the terminal's true market value, as the trial court correctly concluded. Even if not, the valuation at least should have included the expected value of the terminal's possible future income under new regulatory and market circumstances—just as thousands of real-life transactions value property every day.

The Federal Circuit was equally incorrect in holding that the United States did not physically take these gates, even though it authorized razing them to the ground. It is settled that the government has a per se duty to compensate for any taking it either conducts itself or authorizes. *Loretto v. Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 426 (1982) ("We conclude that a permanent physical occupation authorized by

government is a taking without regard to the public interests that it may serve.").

This Court should grant the writ of certiorari to correct the grievous errors below.

ARGUMENT

I. WARA WORKED A REGULATORY TAKING.

The Federal Circuit's *Penn Central* analysis is wholly misguided. Its key argument is that the Lemmon Avenue gates had no value because they had not earned a profit:

> In summary, plaintiffs must show that their property had value in the regulatory environment that existed before the government action, and that this value was diminished by the government action that prevented them from operating under the existing regime. They presented no such testimony. Nor is there any indication that they could have done so. Plaintiffs' historical financial performance suggests that their property was *not* valuable for air passenger service with the Wright Amendment in place. Legend, the tenant for which the Lemmon Avenue Terminal was designed, went bankrupt in December 2000, eight months after beginning operations. Atlantic Southeast Airlines, the terminal's only other airline tenant, moved its operations to Love Field's main terminal a few months later. Plaintiffs tried to market their

> property to other airlines, but never received an actual offer, so by the time of WARA's enactment no airline had used the Lemmon Avenue Terminal or paid any rent to plaintiffs for more than five years. Indeed, between their acquisition of the sublease in 1999 and the enactment of WARA in 2006, plaintiffs suffered a net income loss of roughly $13 million. And at no point during that time, including during the period when Legend was operational, did revenue exceed plaintiffs' carrying costs so as to meet plaintiffs' expert's definition for an "economically beneficial use." Since there was no adverse economic impact, there can be no taking.

LTP, 889 F.3d at 1344.

The error here is the incomplete financial analysis. The ultimate question is not whether these state-of-the-art gates had turned a past profit. It is their fair market value, "defined in the law as the price which a willing seller, who is not obliged to sell, would be willing to accept and the price which a willing buyer, who is not obliged to buy, would be willing to pay for the property." *H & R Corp. v. District of Columbia*, 351 F.2d 740, 742 (D.C. Cir. 1965).[4]

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[4] This case cites *United States v. Miller*, 317 U.S. 369 (1943). *Miller* explained that market value could not include any enhancement of value to any retained property after the government purchase. This qualification does not apply in this case because the petitioners were wiped out by the destruction of the entire terminal.

A. WARA Was A Two-Step Process.

Rather than acknowledge the market-value standard, the Federal Circuit assumed that WARA shut down the Lemmon Avenue gates while simultaneously lifting the Wright restrictions for everyone else. But why? Section 2(a) expanded the list of destinations for *all* flights originating at Love Field. The plain text of Section 2(b) simply stated that the Wright Amendment "is repealed on the date that is 8 years after the date of enactment of this Act." Nothing preserved the Wright restrictions on the petitioners alone. And as a matter of equal protection, once the restrictions were lifted for flights out of the Southwest and American gates, they could not constitutionally be selectively enforced against the petitioners.[5] *Then* Section 5(a) ordered Dallas to "reduce as soon as practicable, the number of gates available for passenger air service at Love Field to no more than 20 gates." It is thus perfectly sensible to read WARA by tracking temporally the two stages of its operation. First, all use restrictions are removed from all gates. Second, the Lemmon Avenue gates are shut down. Just as the Court of Claims did, the takings analysis should view the gates as unencumbered at the time WARA ordered them closed. In other words, the correct measure of just compensation values the Lemmon Avenue gates by the same method that would be used to value the

[5] Indeed, Congress reiterated the FAA's authority to enforce airline non-discrimination requirements at Love Field—but only after the reduction to 20 gates. WARA § 5(e)(2).

American and Southwest gates in a condemnation proceeding.

This is not just the plain text and arrangement of the statute. Not even the lowest level of rational basis review would allow for the differential treatment of the two sets of gates. No feature of the Lemmon Avenue gates marked them for distinctive negative treatment. They were the most modern at Love Field; if anything, simple efficiency would have required razing Southwest or American gates before the Lemmon Avenue ones. The Lemmon Avenue gates also had better access to ground transportation.

The situation replays *City of Cincinnati v. Discovery Network, Inc.*, 507 U.S. 410 (1993), where this Court stopped a city from arbitrarily picking winners and losers. There, the Court considered which distributors of written material had the right to put free-standing newsracks on public property in Cincinnati. Cincinnati claimed that its interest in safety and esthetics let it limit the number of these newsracks. But it advanced no reason why the commercial publication of Discovery was entitled to less protection than ordinary newspapers. Hence the Court concluded that, although the First Amendment did not restrict Cincinnati's ability to limit for safety and esthetic reasons the number of newsracks on public streets, it was "an insufficient justification for the discrimination against respondents' use of newsracks that are no more harmful than the permitted newsracks, and have only a minimal impact on the overall number of newsracks on the city's sidewalks." *Id.* at 418. And further: "We agree with the city

that its desire to limit the total number of newsracks is 'justified' by its interests in safety and esthetics. The city has not, however, limited the number of newsracks; it has limited (to zero) the number of newsracks *distributing commercial publications*." *Id.* at 429. Of course, Cincinnati's interests in safety and esthetics could have been satisfied without playing favorites. It could have auctioned off spaces for newsracks—just as Dallas could have auctioned off airline gates. It could have allocated them by lot. But it could not use safety and esthetics as pretexts to favor well-connected political groups over a vulnerable political outsider. *Discovery Network* was a First Amendment case, but under any standard of review, there was no justification whatsoever to lift the Wright restrictions on some gates but not the Lemmon Avenue ones, and that did not happen because of any specific command contained in the text of the Act. It is thus faithful to the facts and the law to view WARA in two steps: The government first repealed the Wright Amendment for *all* of Love Field, *then* shut down petitioners' gates and authorized their physical destruction.

That established, it is clear that the state cannot elevate form over substance to avoid providing just compensation. The law has long been alert to this risk. For example, a planned two-step process in which the state first regulates and then condemns the regulated land is treated as a condemnation of the unencumbered land. Thus if unregulated land is worth $100, which is reduced to $30 by regulation with an eye to condemnation, the state still owes $100 after the

condemnation. Otherwise, the state could achieve in two steps an objective that it cannot achieve in one. As the Eleventh Circuit has explained:

> In some cases strict adherence to market value and comparable sales will result in manifest injustice to the owner or to the public, and courts must apply special rules and standards to arrive at "just" compensation. One such rule is the "scope of the project" doctrine. This doctrine seeks to ensure that when deciding the market value of the property the fact-finding body does not consider the positive or the negative impact of any decision the Government makes within the scope of the project which prompted the taking. As a part of this doctrine, a fact finder may disregard the impact of a zoning restriction on a piece of property in determining just compensation when the Government passed the restriction for the purpose of depressing the property's value in an impending eminent domain proceeding.

United States v. 480.00 Acres of Land, 557 F.3d 1297, 1307 (11th Cir. 2009). The Federal Circuit turned this passage upside down when it cited only the penultimate sentence without ever mentioning the last sentence's warning against strategically depressing value. *LTP*, 889 F.3d at 1347. But the passage as a whole makes it crystal clear that no government can circumvent its constitutional obligation to pay full market value for property it takes simply by tinkering with the

precise form of the taking.[6] Yet that is exactly what the Federal Circuit allowed, simply because WARA tacked the illicit purpose of destroying the Lemmon Avenue gates on to the legitimate purpose of repealing the Wright Amendment.

In sum, the Federal Circuit mischaracterized every relevant step in this transaction when it held that $133 million in gates had no value at all. Those gates cannot be valued under the Wright Amendment because WARA lifted those restrictions on *all* gates under its plain text and in the absence of any legitimate police power interest in safety or esthetics to do otherwise. *Then* WARA shut down the gates and authorized their physical destruction. That is a taking governed by the per se compensation rule in *Loretto*. For the Federal Circuit to conclude otherwise is to bless a drafting trick meant to limit the state's liability for destroying a threat to a cartel. The whole transaction should be treated as the sham that it was and the judgment of the trial court reinstated in full.

B. The Decision Below Is Wrong Even Under The Wright Restrictions.

This case warrants review even if the baseline against which compensation should be awarded was

[6] Unsurprisingly, it is long-standing law that private persons cannot perpetrate the same shenanigans on the government to escape their payment obligations. *See, e.g.*, *Comm'r v. Clark*, 489 U.S. 726, 738 (1989) (explaining that in tax law "interrelated yet formally distinct steps in an integrated transaction may not be considered independently of the overall transaction").

the restrictions under the Wright Amendment. That is because the Federal Circuit adopted the odd position that "investment-backed expectations" under *Penn Central* refer to only expectations that current regulations will not become more restrictive. In the Federal Circuit's analysis, property owners cannot expect that restrictions will ever be loosened—no matter the probability.[7]

But the Federal Circuit's misreading would treat the restrictions on Love Field as perpetual, even though they were subject to sustained political attack. In many circumstances, people buy property restricted to limited use in the hope that they can secure a regulatory change making the property more valuable. In those cases, the correct valuation asks whether the willing buyer will attach a positive value to the possibility that the restrictions will in fact be lifted. The circuits thus commonly accept in the "effort to establish the market value of the property" an owner's assertion that, for example, "there was a reasonable possibility that the property would be rezoned for a more profitable use—the construction of large apartment houses—than the existing zoning (for the construction of residences and small apartment houses) would allow." *H & R Corp.*, 351 F.2d at 741.

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[7] The case on which the circuit relied, *Cienega Gardens v. United States*, 331 F.3d 1319 (Fed. Cir. 2003) stands for the opposite proposition. It *found* a regulatory taking when the government limited apartment owners' ability to prepay mortgages. There was no discussion of how to treat the prospect of deregulation.

The economic logic behind this position is impeccable. The market values *everything* about a property—not only its current profitability, but also the expected present value of all future income, including income that could come after regulatory change. The reason these transactions take place is that property buyers think it more likely than the sellers that favorable revision of the regulations will occur. The option value of future uses matters.

One valuable future use at Love Field could have come through regulatory change. The petitioners knew that large amounts of value could be unlocked by repealing the Wright restrictions, and that, in the fraught situation, they had a reasonable chance of achieving it (if an overbearing political process had not short-circuited their efforts by the immediate seizure and destruction of the property—a circumstance never encountered in an ordinary zoning case). Repeal of the Wright Amendment of course was never certain, but neither was it impossible. Indeed, even if removal of all restrictions was not possible, lifting the Wright restrictions with respect to just some key states such as Florida or Arizona could have quickly changed the financial calculus. Yet nowhere did the Federal Circuit recognize this basic aspect of market value.

Another future use could have come through changed airline interest. One reason the Lemmon Avenue gates did not generate positive cashflow was that the events of September 11, 2001, slowed down the development of air transportation throughout the United

States, making it more difficult for airlines to gain footholds in any established market. But it is total market value—including long-term value—not just short-term rental value at issue. Indeed, the post-September 11 conditions no longer exist. Today, the rapid expansion of air travel may have made the Lemmon Avenue gates an attractive proposition even with the Wright restrictions. Additionally, in the early 2000s, the mayor of Dallas was openly hostile to any operations initiated at Love Field. That caused Pinnacle Airlines, a rapidly growing discount carrier in the southeastern United States, to back off its decision to lease the Lemmon Avenue gates. (The petitioners sued the mayor and the City of Dallas for interference with business relations.) The Federal Circuit made no reference to that event. But the market does not assume that political spats like this will occur forever. If one local airline almost leased the gates once, it was likely that another would one day complete the deal.

Perhaps technology would have provided another future use. Aerospace technology has advanced, as it always does. It could well be that new types of aircraft with better fuel economy and performance could have turned a profit when earlier planes could not.

Finally, there may have even been future value from the competitor airlines themselves. Southwest and American might have leased the gates to upgrade their operations to a newer terminal. The market takes all these factors into account. But the Federal Circuit's

frozen-in-time analysis refused to recognize the market reality that regulations and other circumstances evolve.

II. WARA WORKED A PHYSICAL TAKING.

The Federal Circuit also took a blinkered view of physical takings when it concluded that "WARA did not codify the Five-Party Agreement in its entirety and specifically did not codify the portions of the Agreement in which Dallas agreed to acquire and demolish plaintiffs' gates." *LTP*, 889 F.3d at 1348. Here, the Federal Circuit fell into the trap of assuming that only the explicit language of a given contract should be relevant to understanding the total deal. That might be true as between the parties to the transaction, but it is manifestly false to the extent that the choice of contract language is intended to strategically limit the rights of third parties. The Five-Party Agreement proves the obvious conclusion that the parties were in league to limit the exposure of the United States to any takings claim by declining to make the U.S. a full partner on the face of the agreement. But the U.S. was a full partner: It authorized the entire scheme, allowing the parties to escape the antitrust laws. It mandated the reduction in gates. Section 5(d)(1) of WARA explicitly stated that the FAA could not undertake actions "inconsistent" with the agreement or in any way "challenge" its legality. *Id.*

In *Burton v. Wilmington Parking Authority*, 365 U.S. 715 (1961), this Court held that a public

landlord had authorized discrimination when it refused to include a clause in its lease preventing Eagle, a restaurant in the facility, from discriminating on the basis of race. As this Court explained, "[t]he State has so far insinuated itself into a position of interdependence with Eagle that it must be recognized as a joint participant in the challenged activity, which, on that account, cannot be considered to have been so 'purely private' as to fall without the scope of the Fourteenth Amendment." The same logic applies here.

Indeed, extra scrutiny is always needed when parties seek by agreement to limit their exposure to outsiders. For example, in *Westendorf v. Stasson*, 330 N.W.2d 699, 701 (Minn. 1983), a subrogation case, the injured party and the defendant entered into a strategic settlement that provided that all "payments to be made hereunder are solely attributable to the pain and suffering and permanent injury" of the plaintiff and the loss of consortium to her spouse. But the claim was an ordinary tort action in which recovery for medical expenses was appropriate. The sole purpose of writing the agreement that way was to let the settling parties cut off an insurance company that was entitled to receive reimbursement of its medical expenses—a fraud against a third party. The court concluded that the insurer should not be bound by a "bargain to which it was not privy." *Id.* at 702. And that concerned only private parties. The United States government should never be allowed to distance itself from the actions of its business partners, which is exactly what the United States tried to do in WARA. Combined with the proper

understanding of WARA's function—lifting the restriction, then ordering the gates blown up—the United States' actions were a physical confiscation of the gates, properly assessed at their unencumbered fair market value.

Similarly, it does not matter that WARA prohibited federal money from outright paying for the destruction of the Lemmon Avenue gates. No government is entitled to rid itself of any liability under the Fifth Amendment by the simple declaration that government funds may not be used for the project. The constitutional obligation remains notwithstanding statutory repudiation; otherwise the Just Compensation Clause becomes a dead letter. A long stream of cases stands for the proposition articulated in *Monongahela Navigation Co. v. United States*, 148 U.S. 312, 328 (1893): "There can, in view of the combination of those two words"—"just" and "compensation"—"be no doubt that the compensation must be a full and perfect equivalent for the property taken." No statutory caveat can defeat that constitutional imperative.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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