No. 21-1164

IN THE

Supreme Court of the United States

LARRY STEVEN WILKINS; JANE B. STANTON,

Petitioners,

v.

UNITED STATES OF AMERICA,

Respondent.

On Writ of Certiorari to the United States Court of Appeals for the Ninth Circuit

BRIEF OF LOCAL GOVERNMENT ORGANIZATIONS AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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INTERESTS OF *AMICI CURIAE*[1]

Amici curiae are organizations that represent cities, counties, and other local governments as well as local officials and local government attorneys:

- The National Association of Counties ("NACo") is the only national association that represents county governments in the United States. Founded in 1935, NACo serves as an advocate for county governments and works to ensure that counties have the resources, skills, and support they need to serve and lead their communities.
- The National League of Cities ("NLC") is the oldest and largest organization representing municipal governments throughout the United States. Its mission is to strengthen and promote cities as centers of opportunity, leadership, and governance. Working in partnership with forty-nine State municipal leagues, NLC serves as a national advocate for more than 19,000 cities, villages, and towns, representing more than 218 million Americans.
- The U.S. Conference of Mayors ("USCM"), founded in 1932, is the official nonpartisan organization of all United States cities with a population of more than 30,000 people, which includes over 1,400 cities at present. Each city

[1] All parties to this matter have provided written consent for the filing of this *amicus* brief. No counsel for a party authored this brief in whole or in part; no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief; and no person other than *amici*, their members, or their counsel made a contribution to its preparation or submission.

is represented in the USCM by its chief elected official, the mayor.

- The International City/County Management Association ("ICMA") is a nonprofit professional and educational organization of over 9,000 appointed chief executives and assistants serving cities, counties, towns, and regional entities. ICMA's mission is to create excellence in local governance by advocating and developing the professional management of local governments throughout the world.
- The International Municipal Lawyers Association ("IMLA") is a nonprofit professional organization of over 2,500 local government attorneys. Since 1935, IMLA has served as a national, and now international, resource for legal information and cooperation on municipal legal matters. Its mission is to advance the development of just and effective municipal law and to advocate for the legal interests of local governments. It does so in part through extensive *amicus* briefing before the U.S. Supreme Court, the U.S. Courts of Appeals, and State supreme and appellate courts.

Local governments often find themselves entangled in property disputes with the federal government. This is particularly true in the western United States, where the federal government is the predominant landowner.[2] When such disputes arise, they are framed by the requirements of the Quiet Title Act, 28

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[2] *See* Carol Hardy Vincent & Laura A. Hanson, CONGRESSIONAL RESEARCH SERVICE, *Federal Land Ownership: Overview and Data*, at 7-8 (Feb. 21, 2020), *available at* https://crsreports.congress.gov/product/pdf/R/R42346.

U.S.C. § 2409a, which provides the exclusive mechanism for resolving claims relating to real property in which the United States claims an adverse interest. *See Block v. North Dakota ex rel. Bd. of Univ. & Sch. Lands*, 461 U.S. 273, 280 (1983). As representatives of frequent Quiet Title Act litigants and their counsel,[3] *amici* are deeply interested in ensuring that the Act's statute of limitations is interpreted in a manner that facilitates efficient and fair resolution of disputes.

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[3] *See, e.g.*, *North Dakota ex rel. Wrigley v. United States*, 31 F.4th 1032 (8th Cir. 2022); *City of Santa Monica v. United States*, 650 F. App'x 326, 327 (9th Cir. 2016); *City of Oakland v. Lynch*, 798 F.3d 1159 (9th Cir. 2015)*; Kane Cnty., Utah v. United States*, 772 F.3d 1205 (10th Cir. 2014); *San Juan Cnty., Utah v. United States*, 754 F.3d 787 (10th Cir. 2014); *Calhoun Cnty., Texas v. United States*, 132 F.3d 1100 (5th Cir. 1998); *Humboldt Cnty. v. United States*, 684 F.2d 1276 (9th Cir. 1982); *Park Cnty., Montana v. United States*, 626 F.2d 718 (9th Cir. 1980); *Town of Ogden Dunes v. United States Dep't of Interior*, No. 2:20-CV-34-TLS-JEM, 2022 WL 715549 (N.D. Ind. Mar. 10, 2022); *North Dakota ex rel. Stenehjem v. United States*, Nos. 1:12-cv-125 & 1:12-cv-102, 2020 WL 5869921 (D.N.D. Oct. 2, 2020); *McKenzie Cnty. v. United States*, No. 1:16-cv-001, 2019 WL 3646836 (D.N.D. Aug. 6, 2019); *Aderholt v. Bureau of Land Mgmt.*, No. 7:15-cv-00162-O, 2016 WL 3541857 (N.D. Tex. June 29, 2016); *City of Tombstone v. United States*, No. CV-11-00845-TUC-FRZ, 2015 WL 11120851 (D. Ariz. Mar. 12, 2015); *Bd. of Comm'rs of Catron Cnty., N.M. v. United States*, 934 F. Supp. 2d 1298 (D.N.M. 2013); *Cnty. of Shoshone, Idaho v. United States*, 912 F. Supp. 2d 912 (D. Idaho 2012), *aff'd*, 589 F. App'x 834 (9th Cir. 2014); *City of Buckley v. Toman*, No. 3:10-CV-05209-RBL, 2011 WL 3298418 (W.D. Wash. Aug. 1, 2011); *City of Baker City, Oregon v. United States*, No. 08-717-SU, 2010 WL 1406526 (D. Or. Apr. 5, 2010); *Cnty. of Inyo v. Dep't of Interior*, No. CV F 06-1502 AWI DLB, 2008 WL 4468747 (E.D. Cal. Sept. 29, 2008); *City of Shakopee v. United States*, No. 04-95-373(DSD/JMM), 1997 WL 57745 (D. Minn. Feb. 6, 1997).

INTRODUCTION AND SUMMARY

Amici agree with petitioners' demonstration that the Quiet Title Act's statute of limitations should be interpreted to be a claims-processing rule rather than a jurisdictional requirement. *Amici* write separately to inform the Court of the practical importance of this issue for local governments and other litigants.

If the Quiet Title Act's statute of limitations is interpreted to be jurisdictional, the ability of local governments and other claimants to negotiate and settle Quiet Title Act claims will be impeded. Although the Act has a generous limitations period, local governments and other claimants often are unaware of or have no reason to bring claims until near the end of that period. In this situation, the statute of limitations normally does not impede settlement negotiations because the parties can enter into tolling agreements suspending the statute's running. But a jurisdictional statute of limitations cannot be tolled by agreement. As a consequence, treating the Quiet Title Act's statute of limitations as jurisdictional will impede the ability of local governments and others to negotiate settlements and may force them to file unnecessary, wasteful suits, to make unwarranted concessions, or to abandon entirely meritorious claims.

Treating the Quiet Title Act's statute of limitations as jurisdictional will cause other practical problems as well. It will permit the federal government to unfairly contradict its prior representations. And even where the United States concedes that a claimant has filed suit within the limitations period, treating the Quiet Title Act's statute of limitations as jurisdictional will permit third parties to interfere in and impede litigation between local governments and the United States.

ARGUMENT

I. TREATING THE QUIET TITLE ACT'S STATUTE OF LIMITATIONS AS JURISDICTIONAL IMPEDES AND DISTORTS SETTLEMENT

Local governments generally try to resolve disputes with the federal government through negotiation and to reach mutually agreeable solutions. Normally, statutes of limitations do not impede such negotiations because parties can enter into tolling agreements suspending the limitations period until they have fully explored negotiations and the possibility of mutually agreeable settlement. If, however, the Quiet Title Act's statute of limitations is interpreted to be jurisdictional, parties will be unable to enter into tolling agreements or otherwise extend the limitations period, which will significantly impair the ability of local governments to negotiate settlements with the federal government.

Even though the Quiet Title Act affords claimants a generous twelve-year limitations period, which generally does not begin to run until they "knew or should have known" of an adverse claim by the United States, 28 U.S.C. § 2409a(g),[4] local governments nonetheless often run up against the statute of limitations' deadline. A local government may not become actually aware of an adverse claim to a property by the federal government until long after they should have known of the claim, and the statute of limitations has begun to run. For example, the Forest Service sometimes designates areas of undeveloped federal land as

[4] Under the Quiet Title Act, however, suits by state governments are generally governed by an actual-notice standard. *See* 28 U.S.C. § 2409a(g)-(k).

"roadless" despite the presence of county access roads. In that situation, a Quiet Title Act claim against the United States may accrue when the designation is published in the Federal Register, because the local government "should have known" about the publication. However, the county may not become actually aware of the United States' adverse claim until much later when the federal government puts up signs on the county access roads, at which point most of the limitations period may have run.

A local government also may be actually aware of the United States' adverse interest when it accrues but not find the interest worth challenging until some time later. For example, if the federal government asserts an easement through little used, underdeveloped county land, a county may have no reason to challenge that assertion at first. A decade later, however, the county may find an important use for the land as the site of a new recreation center or water treatment facility, leaving the county with little time to negotiate an agreement with the United States over such use.

In these circumstances, if the Quiet Title Act's statute of limitations is treated as jurisdictional, local governments will not be able to extend its limitations period by entering into tolling agreements with the federal government. *See, e.g.*, *Ins. Corp. of Ireland, Ltd. v. Compagnie des Bauxites de Guinee*, 456 U.S. 694, 702 (1982) (jurisdictional defects cannot be cured through consent, estoppel, or waiver); *see also Arbaugh v. Y & H Corp.*, 546 U.S. 500 (2006) (discussing consequences of treating statutory requirements as jurisdictional rather than claim elements). Without that option, local governments and other claimants may not have the time needed to conduct

negotiations, and the opportunity for mutually beneficial settlement may be lost.

Even worse, negotiating under the pressure of the imminent expiration of the statute of limitations, local governments may be forced into wasteful or unfair actions. *First*, as the expiration of the limitations period approaches, a city or county may have to incur the expense of investigating, developing, and filing suit—even if doing so will impede or sabotage negotiations otherwise likely to succeed—simply to avoid seeing its claim time-barred.

Second, a looming statutes of limitations deadline may force a local government unable or unwilling to incur the costs of litigation to make otherwise-unwarranted concessions in settlement negotiations.

Third, a local government that does not become actually aware of an adverse claim by the United States until late in the limitations period may simply abandon the claim. Knowing that the deadline is approaching, the local government may decide that it has no chance of reaching a negotiated agreement in the time remaining, and if it expects the expense and inconvenience of litigation to be high, it may decline even to investigate its claim, even though such investigation might reveal a meritorious claim.

Thus, treating the Act's statute of limitations as jurisdictional impairs the ability of local governments to reach mutually beneficial settlements with the federal government, forces them to incur wasteful and unnecessary expense, and unfairly pressures them to accept disadvantageous settlements or to abandon claims prematurely.

II. TREATING THE QUIET TITLE ACT'S STATUTE OF LIMITATIONS AS JURISDICTIONAL PERMITS UNFAIR FEDERAL GOVERNMENT LITIGATION TACTICS

Treating the Quiet Title Act's statute of limitations as jurisdictional also creates a danger of unfair litigation tactics by the federal government. In property disputes with local governments, the federal government often makes representations about its interests and its claims. If the Quiet Title Act's statute of limitations is treated as jurisdictional, the federal government cannot be held to have waived the statute or be estopped from invoking it as a result of such representations. *See Ins. Corp. of Ireland*, 456 U.S. at 702.[5] As a consequence, if the statute of limitations is jurisdictional, the federal government may bar claims by local governments even though it has led them to believe that no claim has yet accrued.

This concern is particularly pointed when local governments assert rights under Section 8 of the Mining Act of 1866, commonly referred to as Revised Statute ("R.S.") 2477. *See* Act of July 26, 1866, ch. 262, § 8, 14 Stat. 251, 253 (repealed 1976). Through R.S. 2477, Congress granted rights-of-way for the construction of roads over "public lands, not reserved for public uses," *id.*, which were used to establish most transportation routes in the western United States. Federal Land Policy Management Act of 1976, Pub. L. No. 94-579, § 706(a), 90 Stat. 2743, 2793, repealed this

[5] While the Quiet Title Act's statute of limitations is not subject to equitable tolling beyond the discovery rule expressly incorporated into it, *see United States v. Beggerly*, 524 U.S. 38, 48-49 (1998), waiver and estoppel raise distinct issues. *See, e.g.*, *United States v. Locke*, 471 U.S. 84, 94 n.10 (1985); *Zipes v. Trans World Airlines, Inc*., 455 U.S. 385, 393 (1982).

grant, but preserved pre-existing rights-of-way. *See* 43 U.S.C. § 1769(a). Therefore, whenever the United States asserts a property interest conflicting with one of these historic rights-of-way, the parties (and the courts) must engage in the "difficult, well-after-the-fact, task" of interpreting a 100-plus-year historical record. *See Cnty. of Shoshone*, 912 F. Supp. 2d at 915.

Such historical records frequently include representations made by the federal government to persuade local governments to forego litigation regarding validity of their rights-of-way. Because a Quiet Title Act claim does not accrue until the claimant's title is "disputed" by the federal government, these representations may lead local governments to conclude that the statute of limitations has not begun to run on their claims to their rights-of-ways. *See, e.g.*, *Mills v. United States*, 742 F.3d 400, 405 (9th Cir. 2014) (holding Quiet Title Act claim accrues only if United States expressly or implicitly disputes a R.S. 2477 right-of-way and therefore did not accrue when federal employee blocked claimant from accessing right-of-way). Ordinarily the doctrine of equitable estoppel would prevent a defendant that induces a claimant to delay filing suit from later asserting that the statute of limitations has run. *See, e.g.*, *Cada v. Baxter Healthcare Corp.*, 920 F.2d 446, 450-451 (7th Cir. 1990). But equitable estoppel does not apply to a jurisdictional statute of limitations. *Id.* at 451. Therefore, if the Quiet Title Act's statute of limitations is jurisdictional, nothing prevents the federal government from ignoring or reinterpreting a prior administration's assurances, claiming that a "dispute" accrued in the distant past, and contending that a local government's claim to disputed property is time barred.

III. TREATING THE QUIET TITLE ACT'S STATUTE OF LIMITATIONS AS JURISDICTIONAL PERMITS THIRD-PARTY INTERFERENCE

Treating the Quiet Title Act's statute of limitations as jurisdictional also allows outside parties to interfere in litigation between local governments and the United States.

This danger is highlighted by *Kane County v. United States*, 772 F.3d 1205 (10th Cir. 2014). In that case, a county asserted rights-of-way through federal public land. After investigation, the United States concluded that the statute of limitations had not run because it had not asserted an adverse interest in the land in question more than twelve years before the county filed suit. *See id.* at 1215. But various wilderness advocacy groups, eager to stop public use of the roads at issue, filed post-trial *amicus* briefs contending that the statute of limitations had run *See Kane County v. United States*, 934 F. Supp. 2d 1344, 1347 (D. Utah 2013). Because the Tenth Circuit treats the Quiet Title Act's statute of limitations as jurisdictional, the district court was compelled to conduct a lengthy, "highly fact dependent" analysis of whether various historical developments triggered the statute of limitations. *See id.* Moreover, after the district court rejected these arguments, the wilderness organizations renewed their arguments on appeal and forced the Tenth Circuit to reconsider the issue *de novo*. *See Kane County*, 772 F.3d at 1214-1219.

As *Kane County* demonstrates, treating the Quiet Title Act's statute of limitations as jurisdictional permits third parties to interfere in—and, if successful, overturn—litigation under the Act. Local governments and other claimants should be able to rely upon the

United States' determination that a suit is timely. But if the statute is interpreted to be jurisdictional, third parties will be free to force the courts to revisit the statute of limitations even on appeal. Interpreting the Quiet Title Act's statute of limitations to be a claims-processing rule, as it should be, eliminates this unwarranted avenue for collaterally attacking the property rights of local governments.

CONCLUSION

The judgment below should be reversed.

Respectfully submitted,

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