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

MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE* AND BRIEF OF THE NATIONAL FEDERATION OF INDEPENDENT BUSINESS SMALL BUSINESS LEGAL CENTER, CATO INSTITUTE, GOLDWATER INSTITUTE, AND TEXAS PUBLIC POLICY FOUNDATION, AS *AMICI CURIAE* IN SUPPORT OF PETITIONERS

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MOTION FOR LEAVE TO FILE BRIEF AS *AMICI CURIAE*

Pursuant to Supreme Court Rule 37.3(b), the National Federation of Independent Business Small Business Legal Center ("Legal Center"), CATO Institute, Goldwater Institute, and Texas Public Policy Foundation, respectfully move for leave to file the accompanying brief as *amici curiae*.

Petitioners gave blanket consent to the filing of amicus briefs on July 6th, 2022, as noted on the docket.

Respondent did not respond to multiple requests for consent to file an amicus. A representative for the Legal Center reached out to Respondent (via email at SupremeCtBriefs@USDOJ.gov) on July 21, indicating the Legal Center's intent to file an amicus brief in support of Petitioners and asking for "consent to our filing of this brief." Having received no response, a representative for the Legal Center again reached out to Respondent on August 2, asking for indication "whether DOJ will consent to NFIB's filing of an amicus brief on behalf of Petitioners." The Legal Center received no response and therefore *amici* file this Motion for Leave to File.

On June 30th, the Court granted an extension of time to file the parties' briefs in this case. Petitioners' brief was due on August 4, 2022, meaning that, under Supreme Court Rule 37.3(a), an amicus brief in support of Petitioners would be due on August 11, 2022. Thus, the initial correspondence with Respondent notifying of the Legal Center's intention to file complied with Supreme Court Rule 37.2(a), even though doing so was unnecessary. Sup. Ct. R. 37.3(a) ("The 10-day notice requirement of subparagraph 2(a) of this Rule does not

apply to an amicus curiae brief in a case before the Court for oral argument.").

Amici have a significant interest in this case due to the wide-ranging implications of the Court's decision. Whether the Quiet Title Act's statute of limitations is a claim-processing rule will impact property owners nationwide, including small businesses. In this Court, Petitioners seek to resolve a property dispute against the government. *Amici* offer the accompanying brief to provide the Court useful analysis on its trend away from jurisdictional determinations and important considerations to preserve and protect property rights, especially in cases of private parties versus the government.

Respectfully submitted,

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TABLE OF CONTENTS

	Page
TABLE OF AUTHORITIES	ii
INTEREST OF *AMICI CURIAE*	1
INTRODUCTION AND SUMMARY OF ARGUMENT	3
ARGUMENT	5
I. Reading the Quiet Title Act's Unexceptional Statute of Limitations Language as Jurisdictional Unnecessarily Forecloses Access to the Courts, to the Significant Detriment of Property Rights	5
A. The Statutory Text of 28 U.S.C. 2409a(g) Does Not Impose a Jurisdictional Bar	5
B. This Court's Recent Jurisprudence Strongly Suggests the QTA's Statute of Limitations is a Claim-Processing Rule	7
C. To Adequately Protect and Preserve Property Rights in Disputes Between Landowners and Government, Courts Should Render Close Calls in Favor of the Private Property Owner	15
CONCLUSION	20

TABLE OF AUTHORITIES

CASES Page(s)

Arbaugh v. Y&H Corp.,
546 U.S. 500 (2006)..... 8, 10

Babb v. Wilkie,
140 S. Ct. 1168 (2020)..... 7

Boechler, P.C. v. Comm'r of Internal Revenue,
142 S. Ct. 1493 (2022)..... 5, 14, 19

Bowles v. Russell,
551 U.S. 205 (2007)..... 8, 9, 10

Callanan v. United States,
364 U.S. 587 (1961)..... 17

Cedar Point Nursery v. Hassid,
141 S. Ct. 2063 (2021)..... 4, 16, 19

Dolan v. United States,
560 U.S. 605 (2010)..... 11

Eberhart v. United States,
546 U.S. 12 (2005)..... 8, 9

Environmental Protection Agency v. Eme Homer City Generation, L.P.,
572 U.S. 489 (2014)..... 12

Fort Bend Cty., Texas v. Davis,
139 S. Ct. 1843 (2019)..... 9, 13

Gonzalez v. Thayer,
565 U.S. 134 (2012)..... 12, 14

Hamer v. Neighborhood Hous. Servs. of Chicago,
138 S. Ct. 13 (2017)..... 13

TABLE OF AUTHORITIES—Continued

Page(s)

Henderson v. Shinseki,
562 U.S. 428 (2011)..... 5, 11

Holland v. Florida,
560 U.S. 631 (2010)..... 11

John R. Sand & Gravel Co. v. United States,
552 U.S. 130 (2008)..... 9, 10

Kontrick v. Ryan,
540 U.S. 443 (2004)..... 8, 9

Murr v. Wisconsin,
137 S. Ct. 1933 (2017)..... 19

Musacchio v. United States,
577 U.S. 237 (2016)..... 13, 15

Nutraceutical Corp. v. Lambert,
139 S. Ct. 710 (2019)..... 13, 17

PennEast Pipeline Co., LLC v. New Jersey,
141 S. Ct. 2244 (2021)..... 18

Reed Elsevier, Inc. v. Muchnick,
559 U.S. 154 (2010)..... 11, 15

Russello v. United States,
464 U.S. 16 (1983)..... 7

Sandoz, Inc. v. Amgen, Inc.,
137 S. Ct. 1664 (2017)..... 7

Scarborough v. Principi,
541 U.S. 401 (2004)..... 8, 9

Sebelius v. Auburn Regional Medical Center,
568 U.S. 145 (2013)..... 12

TABLE OF AUTHORITIES—Continued

Page(s)

Stern v. Marshall,
564 U.S. 462 (2011) 11

Union Pac. R.R. Co. v. Bhd. of Locomotive Eng'rs,
558 U.S. 67 (2009) 10

United States v. Beggerly,
524 U.S. 38 (1998) 17, 18

United States v. Wong,
575 U.S. 402 (2015) ..... *passim*

STATUTES

18 U.S.C. § 3282(a) 13

18 U.S.C. § 3664(d)(5) 11

28 U.S.C. § 157(b)(5) 11

28 U.S.C. § 1346(f) 6

28 U.S.C. § 2107(c) 10

28 U.S.C. § 2253(c)(1) 12

28 U.S.C. § 2253(c)(3) 12

28 U.S.C. § 2401(b) 5, 6, 12

28 U.S.C. § 2409a(b) 18

28 U.S.C. § 2409a(e) 3, 6, 7

28 U.S.C. § 2409a(g) ..... *passim*

28 U.S.C. § 2501 10

42 U.S.C. § 262(l)(8)(A) 7

42 U.S.C. § 262(l)(8)(B) 7

TABLE OF AUTHORITIES—Continued

	Page(s)
42 U.S.C. § 1395oo(a)(3)	12
42 U.S.C. § 7607(d)(7)(B)	12
45 U.S.C. § 152	10
RULES	
Fed. R. App. P. 4(a)(5)(C)	13
Fed. R. Bankr. P. 4004(a)	9
Fed. R. Civ. P. 23(f)	13
Fed. R. Crim. P. 33	9
OTHER AUTHORITIES	
A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* (2012)	6, 7
Brian A. Garner, et al., *The Law of Judicial Precedent* (2016)	8
Cicero, *De Officiis* (W. Miller transl. 1913)	16
Discourses on Davila, in 6 Works of John Adams (C. Adams ed. 1851)	16
J. Locke, *Second Treatise of Government* (Edes and Gill ed. 1773)	16
The Federalist No. 54 (Easton Press ed. 1979) (James Madison)	16
1 W. Blackstone, Commentaries on the Laws of England (1753)	16

INTEREST OF *AMICI CURIAE*[1]

The National Federation of Independent Business ("NFIB") is the nation's leading small business association, representing members in Washington, D.C., and all fifty states. Its membership spans the spectrum of business operations, ranging from sole proprietor enterprises to firms with hundreds of employees. Founded in 1943 as a nonprofit, nonpartisan organization, NFIB's mission is to promote and protect the right of its members to own, operate, and grow their businesses. The NFIB Small Business Legal Center ("Legal Center") is a nonprofit, public interest law firm established to provide legal resources and be the voice for small businesses in the nation's courts through representation on issues of public interest affecting small businesses. To fulfill its role as the voice for small business, the Legal Center frequently files *amicus* briefs in cases that will impact small businesses.

Cato was established in 1977 as a nonpartisan public policy research foundation dedicated to advancing the principles of individual liberty, free markets, and limited government. Cato's Robert A. Levy Center for Constitutional Studies was established in 1989 to promote the principles of limited constitutional government that are the foundation of liberty. Toward those ends, Cato publishes books and studies, conducts conferences, issues the annual *Cato Supreme Court Review*, and files *amicus* briefs with the courts.

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[1] Pursuant to Supreme Court Rule 37.6, *amici curiae* states that no counsel for any party authored this brief in whole or in part and no entity or person, aside from *amici curiae*, its members, or its counsel, made any monetary contribution intended to fund the preparation or submission of this brief. Petitioners gave blanket consent to the filing of amicus briefs, but *amici curiae* did not receive a response to requests for consent from Respondent.

The Goldwater Institute, established in 1988, is a public policy and research foundation dedicated to advancing the principles of limited government, economic freedom, and individual responsibility through litigation, research papers, editorials, policy briefings, and forums. It is a nonpartisan, tax exempt educational foundation under Section 501(c)(3) of the Internal Revenue Code. Through its Scharf-Norton Center for Constitutional Litigation, the Institute litigates and occasionally files amicus briefs when its or its clients' objectives are directly implicated. It has issued no stock. It certifies that it has no parents, trusts, subsidiaries and/or affiliates that have issued shares or debt securities to the public.

The Texas Public Policy Foundation ("TPPF") is a nonprofit, nonpartisan research foundation dedicated to promoting and defending liberty, personal responsibility, and free enterprise throughout Texas and the nation. For decades, TPPF has worked to advance these goals through research, policy advocacy, and impact litigation. In pursuit of its broad mission, TPPF has successfully represented property owners in courts all across the country who have been subject to unconstitutional restrictions on their properties.

Amici take interest in this case to protect access to the courts and preserve property rights. Reading the Quiet Title Act's statute of limitations as jurisdictional, as the Ninth Circuit did, seriously undermines access to the courts and fundamental aspects of property rights for landowners, including small businesses.

INTRODUCTION AND SUMMARY OF ARGUMENT

One may view this case as simply a dispute over the scope of an easement. But doing so would miss the forest for the trees. Instead, this case asks whether and to what extent rightful private property owners must stand idly by while suffering intrusions on their property, and acquiesce to government recalcitrance and dereliction. In the bundle of rights associated with property ownership, Petitioners have suffered numerous infringements on multiple rights within the bundle—trespassers on their property (right to exclude), theft of property (right to control/use), people shooting at their homes (right to destroy/not destroy), people hunting on their lands (right of control, right of benefit), the killing of a pet (right of control)—all traced back to government disregard for the fundamental importance of private property rights. Pet. for Cert. 8.

Does society, and specifically Congress through the Quiet Title Act (QTA), 28 U.S.C. § 2409a(g), still value property rights enough to afford an avenue for Petitioners to seek legal redress and delineate the government's obligations, to prevent further and continued interference with their fundamental rights? *Amici* submit this brief to stress that the answer is a resounding "yes," for three primary reasons.

First, the text of the QTA's statute of limitations does not meet the Court's high bar to be jurisdictional. Congress did nothing special in § 2409a(g), compared to other statute of limitations provisions, sufficient to render the time bar jurisdictional. Moreover, when compared to § 2409a(e)—a nearby provision in the QTA that expressly divests federal courts of jurisdiction in certain situations—it is clear that the statute of limitations in § 2409a(g) is not jurisdictional.

Second, the Court's recent jurisprudence overwhelmingly leads to the conclusion that the QTA statute of limitations is an ordinary nonjurisdictional claim-processing rule. In the mid-2000s, the Court became more cautious in labeling statutory requirements as jurisdictional. Surveying cases with similar jurisdictional questions, *amici* located only two where the Court held a statutory requirement to be jurisdictional, out of twenty-one total cases. Thus, the other nineteen were ordinary nonjurisdictional claim-processing rules. In those two cases where limits were held to be jurisdictional, exceptional circumstances led to those conclusions. Comparing the QTA with those held to be nonjurisdictional confirms that a similar holding is appropriate here.

Finally, this case provides a vehicle for the Court to reinforce its recent decision in *Cedar Point Nursery v. Hassid*, 141 S. Ct. 2063 (2021), which affirmed the fundamental importance of property rights. In property disputes against the government, private property owners face multiple inherent disadvantages. These range from the government's overwhelming staff and financial advantage to its fallback power of eminent domain. Therefore, in property disputes between private landowners and the government, courts should fashion a rule-of-lenity-type canon of construction where close cases are decided in favor of the private property owner. Doing so would be a small step toward leveling the playing field and affirming the recognition of property rights—from Cicero and Blackstone to Locke and Madison—to be of paramount importance in civil society.

The decision below should be reversed.

ARGUMENT

I. Reading the Quiet Title Act's Unexceptional Statute of Limitations Language as Jurisdictional Unnecessarily Forecloses Access to the Courts, to the Significant Detriment of Property Rights.

A. The Statutory Text of 28 U.S.C. § 2409a(g) Does Not Impose a Jurisdictional Bar.

The Quiet Title Act's (QTA) statute of limitations states that "[a]ny civil action under this section . . . shall be barred" unless brought within 12 years of accrual. 28 U.S.C. § 2409a(g). This language fails the "high bar" clear-statement rule required for a statutory limitation to be jurisdictional. *See Boechler, P.C. v. Comm'r of Internal Revenue*, 142 S. Ct. 1493, 1497 (2022) (citation omitted); *United States v. Wong*, 575 U.S. 402, 409 (2015) ("Government must clear a high bar to establish that a statute of limitations is jurisdictional[.]").

Most importantly, the provision does not speak in jurisdictional language. The word "shall" is of no consequence—this Court has previously rejected the notion that mandatory language favors a limiting provision being jurisdictional. *Henderson v. Shinseki*, 562 U.S. 428, 439 (2011) (citations omitted). While the QTA does speak to the claim, instead of the claimant, *see Wong*, 575 U.S. at 430 (Alito, J., dissenting),[2] other

[2] Even if the current Court were inclined to agree with the dissent in *United States v. Wong*, 575 U.S. 402 (2015), other material reasons exist to hold the Quiet Title Act's (QTA) language as a claim-processing rule. The Federal Tort Claims Act's (FTCA) language "shall be *forever* barred" is more emphatic than the QTA's. Congress borrowed the FTCA's language exactly from the Tucker Act and its predecessor statute. Because of this, when

statutory evidence makes clear Congress did not intend this provision to be jurisdictional.

It is a maxim of statutory interpretation that statutory provisions are not read in isolation. *See* A. Scalia & B. Garner, *Reading Law: The Interpretation of Legal Texts* 167 (2012) ("Whole-Text Canon") (hereinafter "*Reading Law*"). Instead, courts must look at the relevant provision in relation to the entire statute. Almost immediately prior to the QTA's statute of limitations, Congress clearly divested district courts of jurisdiction in certain circumstances. Section 2409a(e) states:

> If the United States disclaims all interest in the real property or interest therein adverse to the plaintiff at any time prior to the actual commencement of the trial, which disclaimer is confirmed by order of the court, *the jurisdiction of the district court shall cease* unless it has jurisdiction of the civil action or suit on ground other than and independent of the authority conferred by section 1346(f) of this title.

(emphasis added). Certainly, Congress need not use "magic words" to evidence its intention that a statute of limitations be jurisdictional. But Congress expressly using the term "jurisdiction" and "cease" when referring to the "district court" in 2409a(e), in such proximity to the statute of limitations in § 2409a(g),

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the Court decided *Wong*, it was doing so with "over 130 years" of understanding the exact language in the FTCA as being jurisdictional. *Wong*, 575 U.S. at 423 (Alito, J. dissenting). Finally, Congress adopted the FTCA in 1946, "consciously borrow[ing] the well-known wording" of the Tucker Act and its meaning. *Id.* at 423–25. The QTA lacks this context and history.

sheds light on the latter provision's meaning. *See Russello v. United States*, 464 U.S. 16, 23 (1983) ("'[W]here Congress includes particular language in one section of a statute but omits it in another section of the same Act, it is generally presumed that Congress acts intentionally and purposely in the disparate inclusion or exclusion.'" (quoted source omitted)); *Reading Law* at 170 ("Presumption of Consistent Usage").

Congress knew how to clearly divest the district courts of jurisdiction. It did so in § 2409a(e). Interpreting the statute of limitations in § 2409a(g) as jurisdictional renders nugatory Congress's decision to use more express and adamant language when divesting district courts of jurisdiction in § 2409a(e). *See Sandoz, Inc. v. Amgen, Inc.*, 137 S. Ct. 1664, 1677 (2017) (declining to interpret § 262(l)(8)(A) of the Biologics Price Competition and Innovation Act as having two timing requirements when § 262(l)(8)(B) had two timing requirements, but Congress chose a different structure and language for § 262(l)(8)(A)); *see also Babb v. Wilkie*, 140 S. Ct. 1168, 1177 (2020) (noting that the Court "ascribe[s] significance" to Congress's choice to use different language in different sections of a law (citation omitted)).

In sum, the QTA's statute of limitations fails to meet the high bar required to be jurisdictional. The text and context of § 2409a(g) suggest the opposite—it is an ordinary claim-processing rule.

B. This Court's Recent Jurisprudence Strongly Suggests the QTA's Statute of Limitations is a Claim-Processing Rule.

For almost twenty years, this Court has rightfully hesitated to interpret time requirements as jurisdictional. This caution demonstrates a greater respect for

Congress by not limiting access to the courts unless Congress clearly revoked such access by statute. Moreover, it prevents the "harsh consequences" befalling small businesses and citizens alike that come from hard-and-fast deadlines, which allow no room for flexibility or equitable consideration. *See Wong*, 575 U.S. at 409. To affirm the Ninth Circuit's interpretation of the QTA's statute of limitations as jurisdictional would reverse course and call into question dozens of the Court's recent decisions.

Although impossible to firmly define, it appears that the Court's shift toward a more refined jurisdictional approach took full steam in the mid 2000's, beginning with its decision in *Kontrick v. Ryan*, 540 U.S. 443 (2004). There, the Court first recognized that it and others had "been less than meticulous" and "have more than occasionally used the term 'jurisdictional' to describe emphatic time prescriptions in rules of court." *Id.* at 454. After *Kontrick* came *Scarborough v. Principi*, 541 U.S. 401 (2004), *Eberhart v. United States*, 546 U.S. 12 (2005) (per curiam), and *Arbaugh v. Y&H Corp.*, 546 U.S. 500 (2006). In all four of these cases, the Court held requirements to be nonjurisdictional, and unanimously did so in three of the four. *See generally* Brian A. Garner, et al., *The Law of Judicial Precedent* 182 (2016) ("A unanimous decision may have greater weight than a split decision[.]").

Speaking on the shift, the Court recognized "in recent decisions, [it has] clarified that time prescriptions, however emphatic, 'are not properly typed "jurisdictional."'" *Arbaugh*, 546 U.S. at 510 (quoted source omitted); *see also Bowles v. Russell*, 551 U.S. 205, 216 n.1 (2007) (Souter, J. dissenting joined by Stevens, Ginsburg, and Breyer, JJ.) (describing "*Arbaugh*,

Eberhart, and *Kontrick*" as the Court "correct[ing] its course" and "deliberately chang[ing] course[.]").[3]

Amici located only two cases since *Kontrick* where this Court held litigation requirements to be jurisdictional, and both had special context. *See John R. Sand & Gravel Co. v. United States*, 552 U.S. 130, 134–136 (2008) (decision based on over 100 years of predecessor statutes and Court decisions); *Bowles*, 551 U.S. at 210 (basing its holding on "longstanding treatment of statutory time limits for taking an appeal as jurisdictional").

The Court has repeatedly held litigation requirements, including time designations, to be nonjurisdictional claim-processing rules:

- *Kontrick*, 540 U.S. at 448, 454 – *unanimously* concluding that Bankruptcy Rule 4004(a), which requires a complaint "shall be filed no later than 60 days after the first date set for the meeting of creditors", is a claim-processing rule.
- *Scarborough*, 541 U.S. at 413–14 – clarifying the Equal Access to Justice Act requirement in § 2412(d)(1)(B) that an application for fees be filed "within thirty days of final judgment" is not jurisdictional.
- *Eberhart*, 546 U.S. at 15–16 – *unanimously* holding Federal Rule of Criminal Procedure 33 requirement that a motion for a new trial be filed within 7 days after the verdict to be a claim-processing rule.

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[3] The Court itself provided an excellent summary of its recent precedents interpreting statutory time requirements to be claim-processing rules, that is, not jurisdictional, in *Fort Bend Cty., Texas v. Davis*, 139 S. Ct. 1843, 1849–50 (2019).

- *Arbaugh*, 546 U.S. 500 – holding that the employee-numerosity requirement of Title VII of the Civil Rights Act of 1964 is not jurisdictional. *Id.* at 516. The Court *unanimously* established the "bright line" rule that "courts should treat [a statutory limitation] as nonjurisdictional" unless Congress "clearly states that [the limitation on a statute's scope] shall count as jurisdictional[.]" *Id.* at 515–16 (citations omitted).
- *Bowles*, 551 U.S. 205 – in a 5-4 decision, concluding that the court of appeals lacked jurisdiction over an appeal filed outside the 14-day window permitted in 28 U.S.C. § 2107(c) due to "longstanding treatment of statutory time limits for taking an appeal as jurisdictional." *Id.* at 210, 215.
- *John R. Sand & Gravel Co.*, 552 U.S. 130 – statute providing that "[e]very claim of which the United States Court of Federal Claims has jurisdiction shall be barred unless the petition thereon is filed within six years after such claim first accrues" is jurisdictional. *Id.* at 132 (quoting 28 U.S.C. § 2501). This was because the "Court ha[d] long interpreted the court of claims limitations statute as setting forth" jurisdictional attributes. *Id.* at 134–136 (relying on predecessor statutes and Court precedents from as far back as 1883).
- *Union Pac. R.R. Co. v. Bhd. of Locomotive Eng'rs*, 558 U.S. 67, 81–84 (2009) – *unanimously* holding 45 U.S.C. § 152 requirement that parties attempt settlement in conference is not jurisdictional.

- *Reed Elsevier, Inc. v. Muchnick*, 559 U.S. 154, 163–66 (2010) (citations omitted) – Copyright Act language that "no civil action for infringement . . . shall be instituted" until copyright registration, is not jurisdictional.
- *Dolan v. United States*, 560 U.S. 605, 611 (2010) – concluding that 18 U.S.C. § 3664(d)(5) 90-day statutory deadline for a court to determine victim's losses did not cut off its ability to award restitution.
- *Holland v. Florida*, 560 U.S. 631, 645 (2010) – reiterating that the Antiterrorism and Effective Death Penalty Act statute of limitations for a writ of habeas corpus is not jurisdictional.
- *Henderson*, 562 U.S. 428 – *unanimously* holding Veterans' Judicial Review Act requirement to file notice of appeal with Veterans Court within 120 days of Board's final decision is not jurisdictional. *Id.* at 441. "Filing deadlines, such as the 120–day filing deadline at issue here, are quintessential claim-processing rules." *Id.* at 435.
- *Stern v. Marshall*, 564 U.S. 462 (2011) – rejecting the argument that 28 U.S.C. § 157(b)(5), which states that "[t]he district court shall order that personal injury tort and wrongful death claims shall be tried in the district court in which the bankruptcy case is pending, or in the district court in the district in which the claim arose[,]" is jurisdictional. *Id.* at 478–81. Important to this outcome was that the "statutory text" did not refer either to the district court or bankruptcy court jurisdiction. *Id.* at 480.

- *Gonzalez v. Thayer*, 565 U.S. 134 (2012) – holding 28 U.S.C. § 2253(c)(3)'s mandate that a certificate of appealability (COA) indicate what specific issue met the statutory issuance requirement is nonjurisdictional. *Id.* at 141–48. This was so, even though (c)(3) expressly referenced (c)(1)—a provision both parties and the Court agreed was jurisdictional. *Id.* at 140–43.

- *Sebelius v. Auburn Regional Medical Center*, 568 U.S. 145 (2013) – *unanimously* holding 42 U.S.C. § 1395oo(a)(3)'s 180–day time limit to file appeals to the Provider Reimbursement Review Board is not jurisdictional. *Id.* at 149. "[W]e have repeatedly held that filing deadlines ordinarily are not jurisdictional; indeed, we have described them as 'quintessential claim-processing rules.'" *Id.* at 154 (quoted source omitted).

- *Environmental Protection Agency v. Eme Homer City Generation, L.P.*, 572 U.S. 489, 511–12 (2014) – 42 U.S.C. § 7607(d)(7)(B) requirement that an objection to a rule be stated with "reasonable specificity" during the comment period in order to be raised during judicial review is not jurisdictional.

- *United States v. Wong*, 575 U.S. 402 (2015) – Federal Tort Claims Act (FTCA) provision, 28 U.S.C. § 2401(b), that tort claims "shall be *forever* barred" unless presented to the agency within "two years after such claim accrues" and then to federal court "within six months" of agency action are nonjurisdictional. *Id.* at 405, 420 (emphasis added). The Court reiterated that "most time bars are nonjurisdictional" and "Congress must do something special,

beyond setting an exception-free deadline, to tag a statute of limitations as jurisdictional[.]" *Id.* at 410.

- *Musacchio v. United States*, 577 U.S. 237, 246–48 (2016) – *unanimously* holding that a criminal defendant cannot raise an 18 U.S.C. § 3282(a) statute of limitations defense for the first time on appeal, because the section is not jurisdictional.[4]
- *Hamer v. Neighborhood Hous. Servs. of Chicago*, 138 S. Ct. 13, 17, 21 (2017) – *unanimously* holding that the court of appeals erred in treating Federal Rule of Appellate Procedure 4(a)(5)(C)'s 30–day limitation on extensions to file a notice of appeal as jurisdictional instead of a claim-processing rule.
- *Nutraceutical Corp. v. Lambert*, 139 S. Ct. 710 (2019) – addressing Federal Rule of Civil Procedure 23(f) requirement that party seek permission to appeal class certification decision "within 14 days after the order is entered." *Id.* at 713. The Court *unanimously* held the time limit to be a "nonjurisdictional claim-processing rule." *Id.* at 714 (citations omitted).
- *Fort Bend County, Texas v. Davis*, 139 S. Ct. 1843, 1850–52 (2019) – *unanimously* holding that the 1964 Civil Rights Act Title VII

[4] It is worth mentioning that the statutory text relevant in *Musacchio v. United States*, 577 U.S. 237 (2016) spoke to the claim and courts: "[N]o person shall be *prosecuted, tried, or punished for any offense* . . . unless . . . instituted within five years next after such offense shall have been committed." 18 U.S.C. § 3282(a) (emphasis added); *see Wong*, 575 U.S. at 430 (Alito, J. dissenting).

requirement that a "charge . . . shall be filed" with the EEOC within 180 days after the alleged unlawful employment practice is not jurisdictional.

- *Boechler*, 142 S. Ct. 1493 – *unanimously* holding statutory requirement that person appeal IRS tax determination within 30 days to the Tax Court, where statute expressly referenced jurisdiction of the Tax Court, is not jurisdictional. *Id.* at 1497–98, 1501. The provision failed to satisfy the "clear-statement rule," and given two permissible readings: "[B]etter is not enough. To satisfy the clear-statement rule, the jurisdictional condition must be just that: clear." *Id.* at 1499.

Under the clear-statement rule, time bars are overwhelmingly nonjurisdictional claim-processing rules. *Wong*, 575 U.S. at 410. Like most of the cases referenced above, the statute of limitations in the QTA is a nonjurisdictional claim-processing rule. Congress did nothing special in § 2409a(g) to suggest otherwise. *Wong*, 575 U.S. at 410 ("Congress must do something special, beyond setting an exception-free deadline, to tag a statute of limitations as jurisdictional[.]").

If express references to jurisdiction in the at-issue provision are not enough to surpass the high bar for the provision to be jurisdictional, then surely a provision without those references is unlikely to surpass that bar. *Compare Boechler*, 142 S. Ct. at 1497–99 (time limit not jurisdictional where provision expressly references "jurisdiction" of the Tax Court) *and Gonzalez*, 565 U.S. at 140, 142 (requirement not jurisdictional even though provision cross referenced jurisdictional provision) *with* 28 U.S.C. § 2409a(g) (having no jurisdictional language or references).

Likewise, if the phrase "shall be forever barred," borrowed directly from a statute with over 100 years of jurisdictional authority, is not emphatic and clear enough to meet the clear-statement rule, nor should the phrase "shall be barred" without that historical context. *Compare Wong*, 575 U.S. at 411–12 (emphatic nature of "shall be forever barred" and legislative history not enough for clear statement) *with* 28 U.S.C. § 2409a(g) ("shall be barred").

Finally, if speaking directly to the court or claim is not sufficient to render a deadline jurisdictional, then so too should be the case here. *Compare Reed Elsevier, Inc.,* 559 U.S. at 163–66 (not jurisdictional with language that "no civil action . . . shall be instituted") *and Musacchio*, 577 U.S. at 246–48 (statute of limitations not jurisdictional with language that "no person shall be prosecuted, tried, or punished for any offense . . . unless . . . within five years") *with* 28 U.S.C. § 2409a(g) ("any civil action . . . shall be barred").

The extensive list of this Court's precedents in the past two decades all point to one incontrovertible conclusion—the QTA's statute of limitations is a claim-processing rule.

C. To Adequately Protect and Preserve Property Rights in Disputes Between Landowners and Government, Courts Should Render Close Calls in Favor of the Private Property Owner.

Should the Court find this a close case after considering the statutory text, context, history, and precedent, another compelling reason exists to hold the QTA statute of limitations as a claim-processing rule—to vindicate the importance of property rights. "The Founders recognized that the protection of

private property is indispensable to the promotion of individual freedom." *Cedar Point Nursery*, 141 S. Ct. at 2071. Indeed, "'[p]roperty must be secured, or liberty cannot exist.'" *Id.* (quoting Discourses on Davila, in 6 Works of John Adams 280 (C. Adams ed. 1851)).

What did Cicero, Blackstone, Locke, and Madison have in common? Each of these influential minds stressed the importance of protecting individual property rights. As Cicero observed, "the chief purpose" in establishing "governments was that individual property rights might be secured" and the "first care" of every political leader was to ensure "that private citizens suffer no invasion of their property rights by act of the state." Cicero, *De Officiis* 249 (W. Miller transl. 1913). Locke echoed similar sentiments, commenting that "[t]he great and *chief end* . . . of men's uniting into common-wealths, and putting them[s]elves under government, *is the pre[s]ervation of their property*." J. Locke, *Second Treatise of Government* 66 (Edes and Gill ed. 1773) (emphasis in original). Madison, commenting on the method of apportionment in the House of Representatives, agreed: "Government is instituted no less for protection of the property, than of the persons, of individuals." The Federalist No. 54 at 369 (Easton Press ed. 1979) (James Madison). Blackstone was the most forceful, describing property as the "third absolute right" of individuals, following personal security and personal liberty, and that "the principal aim of society is to protect individuals in the enjoyment of those absolute rights[.]" 1 W. Blackstone, Commentaries on the Laws of England *124, *138 (1753) (cleaned up). For Blackstone, the law's protection of private property was so fundamental, "that it will not authorize the least violation of it; no, not even for the general good of the whole community." *Id.* at *139 (cleaned up).

In today's society small businesses and property owners suffer a decided disadvantage in property disputes against the government. Unlike disputes where both property owners are private parties, in disputes involving the federal government, the property owner confronts an opponent with a cornucopia of legal staff and financial resources. This disparity in staff and resources renders it *possible* for the government to purposely prolong property disputes, with the goal of starving property owners out of litigation resources.[5]

In *United States v. Beggerly*, the Court recognized, in a quiet title dispute between the government and private property owner, the "special importance" of "landowners know[ing] with certainty what their rights are[.]" 524 U.S. 38, 49 (1998).[6] *Amici* agree. It is

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[5] Surely, the possibility for the government to use its abundant resources to the detriment of an opposing party is not exclusive to property disputes. The same could be said of the criminal defendant. However, for the criminal defendant, there already exists a weight on the scales in their favor to balance against the government's inherent advantages. *See Callanan v. United States*, 364 U.S. 587, 596 (1961) (discussing the rule of lenity).

[6] The Government argues that *United States v. Beggerly*, 524 U.S. 38 (1998), has already answered the jurisdictional question here by concluding the QTA time bar is not subject to equitable tolling. Brief in Opp. at 13–16. Not so. The determinations of whether a statutory deadline is jurisdictional and whether that deadline is subject to equitable tolling, are two separate questions. While answering the first question may decide the answer to the second (a jurisdictional time bar cannot be equitably tolled), the inverse is not true–a time limitation not subject to equitable tolling in a specific situation does not render the time bar jurisdictional. *See e.g.*, *Nutraceutical Corp. v. Lambert*, 139 S. Ct. 710, 714 (2019) (holding a time limitation to be nonjurisdictional and not subject to equitable tolling). Additionally, the concurrence in *Beggerly* interpreted the Court to "correctly hold[] that there is no basis for any additional equitable tolling *in this case*" and proceeded to question whether

important for landowners in property disputes against the government to have an opportunity to vindicate their rights, determine the parties' obligations, or question the scope of an easement. This is especially so because of another built-in government advantage—the fallback power of eminent domain. Eminent domain is a tremendous power, allowing governments to take "property for public use without the owner's consent" either through up-front legal proceedings or by sheer might with ex-post remedies. *PennEast Pipeline Co., LLC v. New Jersey*, 141 S. Ct. 2244, 2254–55 (2021).

Specific to quiet title disputes, the QTA uses the power of eminent domain to, in effect, declare the government a winner in all cases. Even where a court's "final determination [is] *adverse to the United States*, the United States nevertheless *may retain* such *possession or control of the real property* or of *any part thereof as it may elect*" upon payment of just compensation. 28 U.S.C. § 2409a(b) (emphasis added). Thus, in a QTA property dispute between private property owners and the government, the government's advantage is so enshrined that it can pick and choose when it will retain disputed property, regardless of a court's determination on the substantive QTA action. The protection and preservation of private property rights demands more.

In property disputes between private property owners and the government, courts should consider a

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other doctrines such as "fraudulent concealment or equitable estoppel might apply if the Government were guilty of outrageous misconduct[.]" 524 U.S. at 49 (emphasis added). While the Court's opinion did not address these statements, if the QTA's statute of limitations was jurisdictional, these other doctrines could not apply.

tie-goes-to-the-private-property-owner, rule-of-lenity-type, canon of construction.[7] Doing so would not only counteract the government's advantages in these disputes and attempt to place the property owner on equal footing, but also protect property rights by "'preserv[ing] freedom'" and "'empower[ing] persons to shape and to plan their own destiny in a world where governments are always eager to do so for them.'" *Cedar Point Nursery*, 141 S. Ct. at 2071 (quoting *Murr v. Wisconsin*, 137 S. Ct. 1933, 1943 (2017)).

[7] This proposal should apply in all property disputes between the government and private parties. But in the context of statutory time bars, if a court reaches this phase and is still uncertain, then Congress's statement would not be "clear." *See Boechler, P.C. v. Comm'r of Internal Revenue*, 142 S. Ct. 1493, 1499 (2022).

CONCLUSION

In accord with the text of the Quiet Title Act and this Court's shift away from declaring statutory time requirements as jurisdictional, as well as to reaffirm the importance of private property rights in disputes against the government, the Court should hold 28 U.S.C. § 2409a(g) to be a run-of-the-mill claim-processing rule.

The judgment below should be reversed.

Respectfully submitted,

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