

No. 22-1054

Supreme Court, U.S.  
FILED

MAR 24 2023

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In The  
**Supreme Court of the United States**

ROBERT E. AND JUDITH D. BENNETT,

*Petitioners,*

v.

THE CITY OF KINGMAN,  
CATHERINE M. BOWMAN, AND SIMS MACKLIN, LTD.,

*Respondents.*

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

**PETITION FOR WRIT OF CERTIORARI**

ROBERT BENNETT, Pro Se  
JUDITH BENNETT, Pro Se  
3028 Mallory Loop  
Kingman, AZ 86401  
928-486-9031

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MAY 1 - 2023

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SUPREME COURT, U.S.

## QUESTIONS PRESENTED

1. Did the Arizona District Court and the Ninth Circuit Court Err when they Cited Penn Central v. New York City and failed to address Lucas v. South Carolina Coastal Council, and Reahard v. Lee County on what constitutes reasonable, and what constitutes an investment backed expectation as per Reahard v. Lee County and its subsequent effect on the plaintiff.

Penn Central v. New York City, 77-444 438 U.S. 104 1978

Lucas v. South Carolina Coastal Council, 112 S. Ct. 2886 2900 (1992)

Reahard v. Lee County, 968 F2d 1131 1136 (11th cir 1992) Cert. denied, 115 S. Ct. 1693 (1995)

2. Did the Arizona District Court and the Ninth Circuit Court err when they refused to address the Arizona Property Rights Protection Act, diminished value, agreements that "Run With The Land" as it relates to the 5th and 14th Amendments to the U.S. Constitution and to plaintiffs 1983 claim.

Az Prop 207, 1/21/2006 (Az sec 12-1131 thru Az. Sec 12-1138)

3. Did the Arizona District Court and the Ninth Circuit Court Err when they refused to address the Paradise Valley v. Gulf Leisure on vested rights as it relates to the 5th and 14th Amendments to the U.S. Constitution and to plaintiffs 1983 claim.

Az. 557 P2d 532 (Az Ct. App. 1976)

**QUESTIONS PRESENTED** – Continued

4. Did the Arizona District Court and the Ninth Circuit Court abuse their discretion in dismissing all federal claims and the plaintiffs right to pursue his claims in the court of his choosing as per *Knick v. Township of Scott*.

*Knick v. Township of Scott*, 862 F 3d 310 S.Ct. 17-647 (2019)

## **LIST OF PROCEEDINGS**

Robert E & Judith D Bennett v. The City of Kingman,  
CV 19-08001-PCT-MTL Arizona District Court Judge-  
ment Aug 27, 2021

Robert E & Judith D Bennett v. The City of Kingman,  
No 21-16105 D.C. 3:19-cv-08001 MIL United States  
Court of Appeals for the Ninth Circuit Judgement En-  
tered January 4th 2023

Robert E Judith D Bennett v. The City of Kingman, No  
21-16105 D.C. 3:19-cv-08001 MTL United States Court  
of Appeals for the Ninth Circuit Motion En Banc Hear-  
ing (Denied)

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## **OPINIONS BELOW**

The Ninth Circuit's memorandum is not reported, but may be found at App. 1. The Ninth Circuit's denial of petition for rehearing is reproduced at App. 37. The order of the District Court for the District of Arizona is reproduced at App. 6.

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## **JURISDICTIONAL STATEMENT**

The Ninth Circuit denied a timely petition for rehearing on February 9, 2023. This Court has jurisdiction under 28 U.S.C. § 1254(1).

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## **CONSTITUTIONAL AND STATUTORY PROVISIONS INVOLVED**

1. Fifth and Fourteenth Amendments to the U.S. Constitution.
2. *Knick v. Township of Scott*, 862-F3d 310 S.Ct. 17-647 (2019)
3. *Penn Central v. City of New York*, 438 US at 124
4. *Reahard v. Lee County*, 968 F2d 1131 1136
5. *Lucas v. South Carolina Coastal Council*, 112 S Ct. 2886 2900 (1992)
6. *Jacobs v. United States*, 290 US 13 1933
7. *Bowers v. Whitman*, 671 F3d 905 912
8. *Paradise Valley v. Gulf Leisure*, 557 P2d 532 (Az Ct App 1076)

9. Arizona Property Rights Protection Act (Az Sec 12-1131 thru 12-1138), and particularly 12-1134A, 12-1134F, 12-1137
10. Nollan v. California Coastal Comm, 483 U.S. 825, 107 S.ct. 3141 97 Led 677 1987
11. Agins v. City of Tiburon, 447 U.S. 255, 260, 100 S.Ct 2138, 2141, 65 L.Ed.2d 106 1980
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14. United States v. Gen Motors Corp., 323 U.S. 373, 378, 65 S.Ct 357, 359, 89 L. Ed 1945
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16. Hodel v. Irving, 481 U.S. 704, 713-14, 107 SCt 2076, 2081-82, 95 L.Ed2d 668
17. Baytree of Inverrary Realty Partners v. City of Lauderhill, 873 F2d 1407 1410 (11th Cir. 1989)
18. Ruckelshaus v. Monsanto Co., 467 U.S. 986, 1005, 104 S.Ct 2862, 2874, 81 Led.2d 815 (1984)
19. Eide 908 F2d at 721

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### STATEMENT OF THE CASE

The United States Supreme Court should address this case because the Arizona District Court and the Ninth Circuit Court have applied Penn Central v. the

City of New York in completely different ways from that of the 11th circuit court in *Reahard v. Lee County*.

The different approaches are critical on how property takings are addressed and how the rules are applied to individual cases. The Ninth Circuit Court and the Arizona District Court have chosen a Blanket approach to *Penn Central v. the City of New York* while ignoring or refusing to address the underlying issues.

The 11th Circuit court has chosen to consider the underlying issues and advanced a procedure and questions for the lower court to use in determining whether a taking has occurred or whether just compensation should be addressed.

1. Whether a particular regulation advances a particular state interest. If it does not advance a particular State issue it can be declared invalid (*Nollan v. California Coastal*), 483 U.S. 825, 107 SCt at 3141, 97 LEd.2d 677 1987 (483 U.S. 834, 107 Sct. At 3147: (*Agins v. City of Triburn*), 447 U.S. 255, 260, 100 S.Ct. 2138, 2141, 65 L.E.d.2d 106 1980.
2. Whether the regulation denies an owner economic viable use of his property. 483 U.S. at 834, 107 S.ct. at 3147, 447 U.S. at 260.
3. The 11th District Court delayed the decision in *Reahard* giving deference to the Supreme Court Decision in *Lucas v. South Carolina Coastal Council*, 304 S.C. 376, 404 S.E. 2d 798 1992.

4. The economic impact of the regulation on claimant.
5. The extent to which the regulation has interfered with investment backed expectations.
6. Whether a vested development right exists on the property. Thru either Common law or Civil law.

Further the United States Supreme Court should address this case because the Ninth Circuit Court has denied any applicability of the Arizona Private Property Protection Act by refusing to consider any of the laws enacted under this act.

With the effect of denying the majority of voters (64.8% of the voters) (or 955,533 Voters) their constitutional right to enact (via an initiative) laws that determine how/when property is to be taken and or compensated for within the state for public use.

The Ninth Circuit Court is also Cherry Picking the Arizona Cases they will address and the laws they wish to enforce while simultaneously refusing to address the laws they don't like or the initiatives they don't like . . .

- a. Choosing to enforce a 2-year statute of limitation over the Arizona Private Property Rights Protection Act, which has a 3-year statute of limitations.
- b. Refusing to recognize Az 12-1134F as a right that "runs with the land" the

plaintiff made by the negotiations with the City of Kingman.

- c. Refusing to address Paradise Valley v. Gulf Leisure as a vested right in a C.U.P.

The plaintiff requests the court remand this case to the Arizona District Court to determine the questions enumerated under Reahard v. Lee County and also to return this case to determine the affects the Arizona Private Property Protection Act (12-1134F) (12-1137) and Paradise Valley v. Gulf Leisure has on the plaintiffs 1983 claim and subsequently his 5th and 14th Amendments claims.



## **REASONS FOR GRANTING THE PETITION**

### **Question 1.**

Did the Arizona District Court and the Ninth District Court err when they cited Penn Central v. City of New York ignoring Lucas v. South Carolina and Reahard v. Lee County.

What constitutes a reasonable investment backed expectation, Penn Central v. New York City was based on the potential destruction of a well-established landmark and on (State Law the Landmark Preservation Law of 1965). The key term is what constitutes reasonable and what constitutes an investment backed expectation. Penn Central as opposed to Lucas are on opposing outer limits of what constitutes a reasonable investment backed expectation.

On the one hand Penn Central has the potential of the complete destruction of an established Landmark, that violated the New York Landmark Preservation Act, and was an afterthought by Penn Central to enhance their bottom Line. Clearly New York State and the City had an interest in protecting an established Land Mark. On the other hand, Lucas was the complete taking of any use for the property and clearly was entitled to just compensation.

The Ninth circuit court has taken a blanket approach to their application of Penn Central, While the Eleventh Circuit Court has taken a more balanced approach to the application of Penn Central, as per Reahard v. Lee County.

The Arizona District Court and the Ninth Circuit Court have FAILED TO APPLY ANY CONSIDERATION TO ANY UNDERLYING FACTORS that would affect Penn Central v. New York City to the plaintiff's case.

The Eleventh District Court, contrary to the Ninth District Court has established underlying factors that apply to Penn Central v. New York

Reahard v. Lee County, 968 F2d 1131 1136 (11th cir 1992) cert denied, 115 S. Ct. 1693 (1995) Remanded to apply the multi factor inquiry, including the extent to which the regulation interfered with investment backed expectations.

- A. The History of the property, when it was purchased how much was purchased,

where was it purchased, what was the nature of the title, what was the composition of the land and how was it used.

- B. The history of development, what was built on the property and by whom, how was it subdivided and to whom was it sold, what plats were filed, what roads were dedicated.
- C. The history of zoning and regulation, how and when was the land classified, how was use prescribed, what changes in classification occurred.
- D. How development changed when title passed.
- E. What is the present nature and extent of the property.
- F. What were the reasonable expectations of the land owner, under state common law.
- G. What was the reasonable expectations of the neighbors.
- H. What was the diminution in the investment backed expectations of the land owner if any, after passage of the regulation.

The Arizona District Court and the Ninth Circuit Court did not consider any of the underlying factors in *Reahard v. Lee County* but made a blanket decision based on *Penn Central v. New York City*.



The critical factors the Arizona District Court and the Ninth Circuit Court should have considered before making any ruling:

- a. The zoning on the subject property before annexation into the City of Kingman was C-2H which allowed Storage.
- b. The plaintiff purchased the property because it was already zoned for storage units and had plans for 28,000 square feet.
- c. The plaintiff built the 28,000 Square feet of storage.
- d. The city requested the plaintiff agree to be incorporated into the City of Kingman, the plaintiff agreed so long as there were no adverse effects, and he could build additional storage on his additional 3.4 acres of land.
- e. The plaintiff's storage units where existing before any other residential subdivision was established within 500 feet.
- f. The Boulder Creek subdivision did not exist, until the plaintiff granted to the subdivision an easement, and access to the water main installed by plaintiffs, said easement was granted free of charge. All of the property owners knew or should have known that the existing storage units could be expanded onto the additional 3.4 Acres of land. Additionally, the developer of the Boulder Creek Estates

attempted to buy a portion of the plaintiffs 3.4 acres of land. (The City Staff of Kingman Refused to honor their agreement to reimburse the owner for his expenses in tunneling under Hualapai Mountain Road).

- g. The City of Kingman rezoned the plaintiff's property without his knowledge or consent, violating (Az 11-814) (Az 9-471) (8-4310 to 3843.09) (Rules sec 7.13.1)
- h. On Sept 3rd 2013 the City of Kingman denied the plaintiffs request to rezone his property to allow storage units on his property because they did not want some of the other uses that zoning could eventually have.
- i. On Sept 3, 2013 the City of Kingman changed the allowable uses on the plaintiff's property to allow storage units with a C.U.P.
- j. On Oct 15th 2013 the City of Kingman approved a C.U.P to allow the plaintiff to build storage on his additional 3.4 acres of land. This Zoning was done in lieu of a civil action by the plaintiff to correct the City of Kingman's violation of State Law.
- k. The City of Kingman denied the C.U.P. extension in violation of their agreement with the plaintiff and subsequently violated The Arizona Private Property Protection Act. (Az 12-1134A) (Az 12-1134F) (Az 12-1137)

- l. The City of Kingman violated established common law *Paradise Valley v. Gulf Leisure*, (557 P2d 532)
- m. In 2006 the Citizens of Arizona passed the Private Property Rights Protection Act, which specifically grants diminished value as a compensable right in real property. And nothing in this act refers to a small diminution of value being acceptable, let alone a loss of value in the amount of \$1,950,000.
- n. The plaintiff's property has a 40-foot easement running across the front of the property for a high-pressure gas line, affecting the potential health and welfare of the citizens of the City of Kingman, such that it is in the best interest of its citizens to utilize low occupancy uses such as self-storage on the property.

Clearly the Arizona District Court and the Ninth Circuit court erred in not considering the underlying factors, that apply to the plaintiff's property, there is no city state or government moral or neighbor concerns, the property already has 28,000 square feet of storage on the property. It is also in the best interest of the city, state and surrounding residences from a health and safety standpoint not to increase the occupancy levels of anything built along a high pressure gas line.

Further this zoning change and the denial of the C.U.P. by the city of Kingman, was vindictive and

particularly directed at the plaintiff, inflicting damages that are imposed on the plaintiff alone, with no logical rhyme or reason behind it.

The City has repeatedly violated State Law, not just when they rezoned the property without notifying the plaintiff but also when they denied the extension on the C.U.P. as per 12-1134.

#### Question 2.

Did the Arizona District Court and the Ninth District Court Err. when they refused to address the ramifications of the Arizona Private Property Protection Act,

The Federal Courts and the U.S. Supreme Court have continuously given deference to various elements of individual State Law. From Penn Central v. City of New York the (Landmark Preservation Act) Koontz v. St Johns River Water Management (Protected Wetlands) Nollan v. California Coastal Commission, 483 U.S. 825 1987.

The Citizens of Arizona enacted by initiative the "Private Property Rights Protection Act. Which both the U.S. District Court and The Ninth Circuit Court have refused to address. It seems a bit incongruous for the Courts to defer to State Laws in some cases but refuse to address them in cases where the laws were changed by the voters, and were some judicial activists wish to limit the impact and the future spreading of such laws. The Arizona Private Property Act is a

controversial law, only because it protects private property from unjust regulation, and governments refusal to pay Just Compensation when they diminish the value of the property. The critics have long stated that this law will produce a multitude of court cases. It has not, and the sky has not fallen.

The Private Property Protection Act also provides for the City and the Property owner to reach an amicable solution other than money damages, (Az 12-1134F)

(AZ 12-1134 F.) Any demand for landowner relief or any waiver that is in lieu of compensation **RUNS WITH THE LAND**. App. 45-F.

The City of Kingman and the plaintiff agreed to the use of a C.U.P. in lieu of civil action by the plaintiff for their violations of state law, and federal due process claims as well as equal protection claims and to allow the City of Kingman not to have a rezone of the plaintiff's property for a something more onerous like an auto wrecking yard that they did not want. By negotiating and agreeing with the plaintiff on a C.U.P. as a viable alternative to both a rezone and civil actions the City of Kingman and the plaintiff activated Az Statute 12-1134F.

See Plaintiffs Exhibits Attached

1. City Council Meeting September 3, 2013. Public hearing and Ordinance 1767 to approve a 5-acre property at 3442 Hualapai Mt. Road from C-2 HMR to C-2. App. 54 thru App. 73.

Councilmember Cochran asked Mr. Jeppson why the Planning and Zoning commission recommended denial of the request so strongly. App. 58.

Mr. Jeppson said that in rezoning the property, which the commission did not feel would be uniform. He said that the commission felt strongly that the integrity of the C-2 HMR should be maintained in that corridor. App. 59.

He also said that the next agenda item discusses a text amendment to the C-2 HMR which would allow mini storage facilities through a conditional use permit, in the zoning district. App. 59.

Robert Bennett, applicant for the rezoning, addressed the council. He presented the council with a short letter addressed to them. A Copy of the Letter has been attached to the minutes. App. 59.

Mr. Bennett stated he would like to keep his address as simple as possible because this was a simple scenario. App. 59.

He said that this property was finished and zoned for Mini storage facility when the city asked him whether or not he would go along

with being annexed into the city. App. 59.

He agreed to the annexation with the provision that doing so would not adversely affect his property. App. 59.

He said that downgrading his property has adversely affected his property. App. 59.

He said he was not interested in creating problems and that he would like to build his storage units and move on. App. 59.

He said that it doesn't matter to him whether this change is accomplished through the rezoning or through the amendment to the current zoning. App. 59.

He said he is doing this because he wants to expand his business. App. 59.

Mayor Watson said that zoning really is not a downgrade, but rather an upgrade. App. 60.

Mr. Bennett stated he did not agree with that. App. 60.

He said that this has changed the scenario of his property. App. 60.

He said there is currently property on Hualapai Mt Rd for sale because

the zoning will not allow what Mr. Bennett wants to do. App. 60.

He said that he has been a Real Estate Broker for over 30 years and having storage units is an asset to the neighboring properties. App. 60.

He said he would not be a part of the city if someone had told him the city was going to downgrade his property. App. 60.

He said that he gets emotional about this subject because it upsets him, but he is trying to remain as calm as he can. App. 60.

Mr. Bennett said that all he wants is his zoning and doesn't care how it is done. App. 60.

He said that this is the only fair thing to do since the rezoning was done without his permission. App. 60.

Councilman Wimpee Sr. asked Mr. Bennett when he realized that the property had been rezoned. App. 64.

Mr. Bennett stated he realized this about a year ago when he had an architect and an engineer begin working on plans for the business expansion. App. 64.

He said that he would also like to point out, with regard to the diminished value claim, the law states,



under G 12-1134 (App. 64) that an action for just compensation based on diminished value must be made or forever barred within 3 years of the effective date (see App. 46-G) of the land use law or of the first date the reduction of the existing right to use, divide, sell or possess properties applies to the owners property, whichever is later.

Ordinance 1767 to change zoning to C-2-HMR denied, App. 65.

Ordinance 1766 to allow mini storage in the C-2 HMR was approved by vote 6 to 0. App. 66.

2. City Council meeting October 15, 2013.  
Public hearing resolution 4860 for the approval of a Conditional Use permit C.U.P. to Expand Mini Storage at 3442 Hualapai Mt Rd. App. 75 thru App. 89.

Mr. Jeppson said that the applicant has not signed the Proposition 207 waiver and said that the applicant has refused to sign the waiver as he would like to sue the city if the conditional use permit is not approved. App. 79 PGF-3.

Robert Bennett addressed the council and said he had no problem with signing the proposition 207 waiver, but said that he refused to sign the waiver if it requires him to give up

his rights ahead of time. He said he would sign the waiver if the C.U.P. was approved. App. 79 PGF-2.

He said he wants the correct zoning for his property before he gives up his rights by signing the waiver. App. 80.

Mayor Watson stated that this would not be a rezoning, but approval of a Conditional Use Permit. App. 80.

Mr. Bennett said that either way he would not give up his right to a claim against the city. App. 80.

He also said he would be fine with council making the proposition 207 waiver a condition of the C.U.P. App. 80.

City Attorney Mr. Cooper said that Council could make this a condition in the motion stating that the mayor will not sign off on the C.U.P. until Mr. Bennett signs the waiver. App. 80.

The C.U.P. was approved 6 to 1. App. 89.

3. Certified mail addressed to Mr. Jeppson Oct 25, 2013, along with the requested waiver. App. 90 thru App. 94.

This Conditional use permit establishes a method for the city to allow me to do what we had a right to do, by setting up a process for the city of

Kingman to align with the rights we had for the property when we where in the county and before we where incorporated into the city. We understand that this agreement accommodates the city's desire not to return to the county type zoning because of what might be allowed to be built on the property. This conditional use permit is a good thing and a step in the right direction. . . . App. 92.

Clearly these three documents show the plaintiff and the city mutually benefited by the agreement on the C.U.P. and clearly this agreement meets the criteria of a landowners demand for relief under Az 12-1134F. and clearly because this relief runs with the land, establishes a privity in property and is a protected property interest under the fifth and 14th Amendments to the constitution, and further under

**Az 12-1137 APPLICABILITY** If a conflict between this article and any other law arises, this article controls. App. 49.

The C.U.P. extensions where only a perfunctory requirement. Arizona State Law 12-1134F controls and supersedes the C.U.P. App. 45.

By denying the plaintiffs request for an extension and or a new C.U.P. under, Az 12-1134 -12-1137F the City of Kingman violated the plaintiffs' rights of Due Process, Equal Protection, Property Rights AND PRIVACY in BOTH PROPERTY AND CONTRACTUAL agreement under the law.

IT IS ABUNDANTLY CLEAR THAT BOTH THE ARIZONA DISTRICT COURT AND THE NINTH CIRCUIT COURT ERRED WHEN THEY REFUSED TO ADDRESS THE ARIZONA PRIVATE PROPERTY RIGHTS PROTECTION ACT AND ITS RELATED IMPACT ON PROPERTY RIGHTS, EQUAL PROTECTION RIGHTS, DUE PROCESS RIGHTS JUST COMPENSATION AND EVEN THE RIGHTS TO A JURY TRIAL UNDER THE 7TH AMENDMENT TO THE CONSTITUTION.

FURTHER THE ARIZONA DISTRICT COURT AND THE NINTH CIRCUIT COURT ERRED WHEN THEY REFUSED TO CONSIDER (as it relates to this case): Knick v. Township of Scott, 17-647 862 F3d 310

Further the plaintiff signed the diminished value waiver with the City of Kingman only after it was pointed out to the plaintiff that the waiver says specifically

“as a result of the city’s approval”

The key term is approval, the plaintiff would never have signed any waiver for diminished value if it had included denial of the C.U.P.

### Question 3

Did the Arizona District Court err when they refused to address Paradise Valley v. Gulf Leisure on vested Rights as it relates to the 5th and 14th Amendments to the constitution.

The Ninth Circuit Court claimed the Plaintiff failed to raise a triable dispute as to whether they had a protected property interest at stake and they continued to state property interests “Property interests. . . . Are created and their dimensions are defined by existing rules or understandings that stem from an independent source such as state law[.]” *Bowers v. Whitman*, 671 F.3d 905, 912 (9th cir. 2012) quoting *Bd. of Regents of State Coll. v. Roth*, 408 U.S. 564. 577 (1972) Arizona Courts have declined to find a property interest where the applicant “was subject to the inherently unpredictable and often politicized process of seeking permission from a local legislative body to conduct certain activity on a piece of property. *Aegis of Arizona, L.L.C. v. Town of Marana*, 81 P3d 1016, 1028 (Az. ct App 2003)

The Arizona District Court and the Ninth Circuit Court Erred when they applied *Aegis v. Town of Marana* in a substantial number of **critical ways**.

*Aegis* is NOT applicable to the plaintiffs property or circumstances.

The arguments that the ninth circuit court made in their Memorandum of Jan 6th 2023 are self defeating.

- a. *Aegis of Arizona v. Town of Marana* was decided in 2003.
- b. The Citizens of Arizona by initiative enacted the Arizona Private Property Rights Protection Act in 2006. 12-1131 thru 12-1138.

- c. This Private Property Protection Act that the Arizona District Court and The Ninth Circuit Court refused to address, preempts Aegis v. Marana, and establishes and defines rights in real property.
- d. The Ninth Circuit court failed to address Paradise Valley v. Gulf Leisure Az., 557 p2d 532 (Az ct. app 1976) Which also establishes vested interest in a C.U.P. as a right in real property.
- e. The plaintiff clearly has a vested interest in the C.U.P., as per Paradise Valley v. Gulf Leisure demonstrated by the offsite plans, building plans, sewer permit, grading permit, drainage plans, engineer drawings, architect drawings, the buildings already built by the plaintiff the negotiated settlement with the City of Kingman for their violation of zoning laws, and annexation agreement, the list goes on and on.

#### Question 4

Did the Arizona District Court and the Ninth Circuit Court abuse their discretion in dismissing all the plaintiffs federal claims and the right to pursue his claims in the court off his choosing.

The Arizona District Court by refusing to address the Arizona Private property Protection Act, clearly missed the plaintiff's property rights that RUN WITH THE LAND a right clearly granted under 12-1134.

The Arizona District Court and the Ninth Circuit Court, By not addressing *Paradise Valley v. Gulf Leisure*, again missed the vested interest that the plaintiff had in the C.U.P.

The Arizona District Court and the Ninth Circuit Court made blanket decision on *Penn Central v. City of New York* rather than address the underlying conditions that where more properly addressed in *Reahard v. South Carolina Coastal Council*.

The totality of the evidence clearly indicates that the Arizona District Court and the Ninth Circuit court abused their discretion in dismissing the plaintiffs 1983 claims.

By dismissing all of the plaintiffs claims the courts knowingly are denying the plaintiff the access to any court because just as the plaintiff knows, the courts also know, that the Arizona State Courts will dismiss all claims for violation of statute of limitations.

These courts will thus also be denying the plaintiff his rights under the 7th Amendment to the constitution.

Both the Arizona District Court and the Ninth District are attempting to circumvent what *Knick v. Township of Scott*, 862 F3d 310 decision was supposed to accomplish and to stop the abuse of the statute of limitations from denying plaintiffs of any court willing to hear their case.

## Appendix

We have attached the Documents enclosed so the court can easily determine on (Question Number 2), whether the Arizona District Court and the Ninth Circuit court erred in refusing to address the Arizona Private Property Protection Act. Its effect on Federal Law and its effect on this case.

1. Copy of the "Initiative Measure" enacted into Arizona State Law 12-1132 thru 12-1138.

2. Certified mail sent to Carl Cooper, attorney for the City of Kingman date 4-04-2013. Out lining plaintiffs' problem with the city and their rezoning of his property without following legal procedures.

3. Minutes of Kingman City Council dated September 13th 2013, (agenda Item 6) showing plaintiffs problems with the city and negotiating an agreement with the Kingman City Council and the Planning Commission. As per 12-1134F

4. Minutes of Kingman City Council, dated 10-15-2013, (Agenda Item b.) Showing the city's and the plaintiffs continued negotiation over a rezone to correct their illegal zoning of the plaintiffs property, and in violation of their agreement when they annexed the plaintiff property. And the subsequent settlement of that agreement.

5. Certified mail sent on October 25th 2013, to City of Kingman, memorializing the agreement.



6. City of Kingman Resolution recorded on 1216 – 2013, in Mohave County. Recording listing the 11 items agreed upon in the resolution for the C.U.P.

Clearly these documents establish a right under 12-1134F an agreement in lieu of civil action between the City of Kingman and the Plaintiff that RUNS WITH THE LAND.

By refusing to consider the Arizona Private Property Protection Act as only a state issue the Arizona District Court and the Ninth circuit Court, in not considering a property right, that RUNS WITH THE LAND, (for all intents and purposes an easement that runs with the land) Each of these courts erred in not protecting a right protected under the 5th and 14th Amendments to the constitution and the plaintiffs' rights under due process and equal protection as well as his 1983 claim.

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## CONCLUSION

The petition should be granted.

Respectfully submitted,  
ROBERT BENNETT, Pro Se  
JUDITH BENNETT, Pro Se  
3028 Mallory Loop  
Kingman, AZ 86401  
928-486-9031

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