No. 22-52

In The Supreme Court of the United States

ARIYAN, INCORPORATED, doing business as Discount Corner, et al.,

Petitioners,

v.

SEWERAGE & WATER BOARD OF NEW ORLEANS, et al.,

Respondents.

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

BRIEF FOR RESPONDENT SEWERAGE & WATER BOARD OF NEW ORLEANS IN OPPOSITION

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QUESTION PRESENTED

Does a State entity's delay in paying a state court money judgment based solely on state law grounds constitute a "secondary taking" cognizable in federal court under 42 U.S.C. § 1983?

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INTRODUCTION

Respondent Sewerage and Water Board of New Orleans ("SWB") submits that none of Petitioners' arguments merits further review. Petitioners identify no circuit split. The decisions below correctly followed over a century of precedent from this Court that forecloses using federal courts to enforce state court judgments vindicating purely state law causes of action against a State entity. Put simply, the SWB's delay in paying Petitioners' state court money judgments on state law claims does not amount to a "secondary" federal taking.

In an attempt to avoid a disappointing (but legally mandated) outcome, Petitioners and amici misrepresent critical facts and seek to invent new legal theories untethered to any decision of this Court. Petitioners obtained judgments against the SWB on state law claims. They did not assert federal claims at that time. Thus, the enforcement of Petitioners' money judgments implicates no federal interest protected by 42 U.S.C. § 1983. What *federal* interest could possibly exist in enforcing state court judgments based solely on state law?

Petitioners' request for certiorari seeks to whip up panic and suggest that the Fifth Circuit's ruling eviscerates the Fifth Amendment and threatens the property rights of all. It does nothing of the sort. Moreover, Petitioners find themselves in a position unlikely to repeat itself. Recent jurisprudence from this Court overruled precedent that had prevented plaintiffs from

pursuing federal takings claims against State entities before exhaustion in state courts. With that exhaustion requirement removed, a plaintiff is now free to bring federal claims as soon as the taking occurs. This Court should resist overruling centuries of precedent to address an issue that no longer exists and risk a "solution" that does violence to State sovereignty and comity.

STATEMENT OF THE CASE

In 2013, the United States Army Corps of Engineers and the SWB began construction on a massive flood control project in New Orleans as part of the Southeast Louisiana Urban Flood Control Program. Petitioners are seventy property owners who alleged that they suffered property damage and economic loss as the result of this construction.

In 2015 and 2016, Petitioners filed suit in Louisiana state court, alleging that the SWB's actions violated several tort theories and constituted inverse condemnation under the Louisiana constitution. There was no claim that the SWB acquired or otherwise took title to Petitioners' properties. Importantly, Petitioners asserted no federal claims and candidly admitted as much numerous times throughout the underlying litigation. Petitioners ultimately obtained state court judgments against the SWB for a combined $10.5 million. They have *never* sought to execute their judgments in state court.

In March of 2021, Petitioners filed a § 1983 suit in federal district court under the theory that the SWB's alleged delay in paying their judgments constituted a "secondary taking" distinct from the state law takings claims at issue in their underlying state court judgments. *See* Br. of Pl. Appellants [Doc. No. 00515984429] at 44, *Ariyan, Inc. v. Sewerage & Water Bd. of New Orleans*, No. 21-30335 (5th Cir. Aug. 18, 2021); *see also* App. A-5. They also sought a writ of execution to seize the SWB's property to satisfy their judgments. Petitioners readily admit that they brought this federal suit to avoid "protracted litigation trying to collect judgments in state court" and to attempt to defeat the Louisiana constitution's prohibition against seizing public assets to satisfy a money judgment. *See* Br. of Pl. Appellants [Doc. No. 00515984429] at 17, *Ariyan, Inc. v. Sewerage & Water Bd. of New Orleans*, No. 21-30335 (5th Cir. Aug. 18, 2021).

The SWB moved to dismiss, arguing that Petitioners had failed to state any takings claim or cause of action cognizable under § 1983. The district court agreed and dismissed their suit. App. C.

The Fifth Circuit affirmed. App. A. Following this Court's binding precedent in *Louisiana* ex rel. *Folsom v. Mayor & Adm'rs of New Orleans*, 109 U.S. 285 (1883), the court observed that although Petitioners' "judgments [are] property," Petitioners "cannot be said to be deprived of them so long as they continue an existing liability against the city." *Id*. at 5-6. The Fifth Circuit

denied rehearing *en banc* with no judge requesting a poll. App. E.

REASONS FOR DENYING THE PETITION

I. The Facts Do Not Present the Issue Argued by Petitioners

In an attempt to obscure the absence of a federal takings claim in their state court litigation, Petitioners misstate the facts and often forget the legal theory they advance. In an effort to create any federal hook to garner this Court's interest, Petitioners now claim that in the underlying litigation they "pursue[d] their ***federal takings claims*** in state court." Pet. 9 (emphasis added). Amici assume likewise. But Petitioners' underlying state court judgments were undeniably rendered under state law only. This is evidenced myriad places throughout the record in the underlying litigation where Petitioners themselves often conceded this fact.

When one of the underlying state court lawsuits was first removed to federal court, Petitioners were explicit that their claims against the SWB were for "purely state law claims." Plaintiffs' Memo. in Supp. of Mot. to Sever & Remand [ECF 7-1] at 5, *Sewell v. Sewerage & Water Bd. of New Orleans*, No. 15-3117 (E.D. La. Aug. 11, 2015). In remanding the litigation back to state court, the federal district court found likewise that the causes of action against the SWB involved "purely state law claims." *Sewell v. Sewerage & Water Bd. of New Orleans*, No. 15-3117, 2017 U.S. Dist.

LEXIS 1908, at *11 (E.D. La. Jan. 5, 2017). In affirming that decision, the Fifth Circuit held that the district court was well within its discretion to remand when "only pendent state-law claims remain[ed]." *Sewell v. Sewerage & Water Bd. of New Orleans*, 697 F. App'x 288, 293 (5th Cir. 2017) (internal quotation marks omitted). Further, when another underlying lawsuit was similarly removed to federal court before it was likewise remanded, Petitioners were again explicit that it was "undisputed" that they brought "purely state law claims against the SWB . . . [which] do not give rise to federal jurisdiction." Plaintiffs' Memo. in Supp. of Mot. to Sever & Remand [ECF No. 5-1] at 9, *Sewell v. Sewerage & Water Bd. of New Orleans*, No. 17-8128 (E.D. La. Aug. 29, 2017).

In its reasons for judgment upon remand, the state court that rendered Petitioners' judgments likewise made clear that it was adjudicating only state law claims. *See* App. H-42-49; *see also Sewell v. Sewerage & Water Bd. of New Orleans*, 2018-0996, 2019 La. App. LEXIS 983, at *5-*19 (La. App. May 29, 2019); *Lowenburg v. Sewerage & Water Bd. of New Orleans*, 2019-0524, 2019 La. App. LEXIS 1151, at *9-*27 (La. App. July 29, 2020). Nothing in any of these decisions indicates that any federal claims were raised or adjudicated in the state court litigation.

Only upon Petitioners' re-entry into federal court to try and enforce these state court judgments did they first assert that their state court judgments sounded in federal law. But the Fifth Circuit corrected Petitioners' misstatements:

> [Petitioners] argue that *Folsom* and its progeny are distinguishable because the underlying judgments in those cases sounded in state tort and contract law, while the Plaintiffs' judgments are based on violations of a federal constitutional right. **But Plaintiffs' underlying state court cases were *not* based on any asserted federal right**. As the SWB pointed out in briefing, and as the record shows, Plaintiffs' state court judgments were for violations of Louisiana law, not for violations of the Fifth Amendment Takings Clause as the Plaintiffs have asserted to this Court.

App. A-7 (bolded emphasis added; italics in original).

Thus, the question Petitioners present for this Court's consideration is untethered to the facts in this particular case. Petitioners claim that the issue presented to this Court is whether "the government, consistent with the Fifth and Fourteenth Amendments' self-executing command of Just Compensation for takings of private property, [may] indefinitely delay paying just compensation." Pet. i. But the "just compensation" and damage awards recognized in their state court judgments were rendered solely under the *Louisiana* constitution and tort law. No award was sought or rendered under the *federal* constitution. Although the Louisiana and federal constitutions use similar terminology, the constitutions' guarantees are not identical and cannot be treated interchangeably. For instance, the federal constitution's Just Compensation Clause is significantly limited, whereas the Louisiana constitution allows for recovery of all losses sustained.

Compare Joslin Mfg. Co. v. Providence, 262 U.S. 668, 675 (1923) ("Injury to a business carried on upon lands taken for public use, it is generally held, does not constitute an element of just compensation, in the absence of a statute expressly allowing it.") (internal citations omitted), *with* La. Const. Art. I, § 4(B)(5) ("Except as otherwise provided in this Constitution, the full extent of loss shall include, but not be limited to, the appraised value of the property and all costs of relocation, inconvenience, and any other damages actually incurred by the owner because of the expropriation."). The state court awarded the more expansive damages available under state tort law and the Louisiana constitution.

Moreover, it would have been a legal impossibility for Petitioners to have prevailed on federal takings claims at the time they filed their underlying state court actions. Before *Knick v. Township of Scott*, 139 S.Ct. 2162 (2019), this Court's precedent held that "a property owner whose property has been taken by a local government has not suffered a violation of his Fifth Amendment rights—and thus cannot bring a federal takings claim in federal court—until a state court has denied his claim for just compensation under state law." *Knick*, 139 S.Ct. at 2167 (citing *Williamson Cnty. Regional Planning Comm'n v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985)). And litigation of Petitioners' state law takings claims bars future litigation of any related federal takings claims under the doctrine of *res judicata*. *See San Remo Hotel, L.P. v. City & Cnty. of San Francisco*, 545 U.S. 323 (2005) (holding

that a state court's resolution of a claim for just compensation under state law generally has preclusive effect in any later federal suit); *see also* App. C-7-8 (district court addressing *San Remo* in this case). Thus, Petitioners could not have successfully raised federal takings claims at the time they filed their state court actions, and *San Remo* precludes them from re-litigating those claims now as federal takings claims. Accordingly, the payment of state court judgments on state law takings claims is the only potential issue in this case. As explained below, that does not present a viable federal claim under § 1983.

As this Court has recognized, 42 U.S.C. § 1983 provides a cause of action against any person acting under color of state law who deprives another of a right, privilege or immunity secured under the federal constitution or federal laws. *See e.g.*, *Vega v. Tekoh*, 142 S.Ct. 2095 (2022). But federal courts "have no authority to review state determinations of purely state law." *Int'l Longshoremen's Ass'n v. Davis*, 476 U.S. 380, 387 (1986). Thus, § 1983 *does not* provide a litigant a cause of action for enforcement of rights conferred under state law. Or as the Seventh Circuit *en banc* explained in holding that no federal due process or takings claim exists to enforce payment of state court judgments against a city, "[t]he Constitution does not authorize federal judges to superintend state and local governments' compliance with their own laws." *Evans v. City of Chicago*, 10 F.3d 474, 481 (7th Cir. 1993) (*en banc*), cert. denied, 511 U.S. 1082 (1994). To hold otherwise would make federal courts ombudsmen over state

courts, offend traditional notions of State sovereignty and comity, and insert the federal government into purely state matters. Petitioners disclaim that they are trying to re-litigate their underlying takings claims, but in reality that is exactly what this case seeks to do. With no federal (or state) property interest in immediate payment of a judgment, Petitioners do not have a viable § 1983 claim, and tie themselves in knots trying to invent a reason for federal courts to insert themselves in purely state law matters.

II. Petitioners Do Not Raise a Plausible Federal Takings Claim

In assessing Petitioners' alleged federal taking premised on a delay in paying a state court judgment adjudicating purely state law claims, it is critical to focus on their precise theory of the case. As the Fifth Circuit observed:

> They "do not seek to re-litigate the legal or factual issues or compensation awards decided in the state courts." Rather, their case "concerns an independent Takings Clause violation—the failure to timely pay just compensation once the compensation was determined and awarded." This nonpayment is, according to the Plaintiffs, a "secondary taking," and the only issue in their case.

App. A-5.

The majority of the Petition for Writ of Certiorari is devoted to a discussion of the "self-executing" nature

of the Fifth Amendment and esoteric references to the Magna Carta and Runnymede. But as the Fifth Circuit recognized, this "fail[s] to address the actual issue presented by Plaintiffs' appeal, namely whether a government's failure to pay a court judgment constitutes a taking in the first place." App. A-9. This Court squarely addressed that question in the negative almost 140 years ago, and lower courts have relied on that answer ever since:

> A party cannot be said to be deprived of his property in a judgment because at the time he is unable to collect it.

Folsom, 109 U.S. at 289; *see also Minton v. St. Bernard Par. Sch. Bd.*, 803 F.2d 129, 132 (5th Cir. 1986) (recognizing that *Folsom* held that "the property right created by a judgment against a government entity is not a right to payment at a particular time but merely the recognition of a continuing debt of that government entity"). The various amicus briefs likewise fail to address this threshold issue whether a "secondary" federal taking occurs as a result of a delay in payment of money judgments on purely state law claims.

The Fifth Circuit is no outlier in following *Folsom* and refusing to become embroiled in purely state law matters:

> A state court judgment is something to be enforced through the state's judicial process, including its powers of contempt. Every state court judgment does not provide a would-be plaintiff with a cognizable property right

> under 42 U.S.C. § 1983, and every alleged delay in the enforcement of the mandate does not provide a plaintiff with a claim of deprivation without due process of law. To hold otherwise would assign the federal courts the role of ombudsmen in monitoring the execution of state judgments, a role Congress surely did not envision in passing this statute, and one that would be destructive of federal-state relations.

Biser v. Bel Air, 991 F.2d 100, 105 n. 2 (4th Cir. 1993) (Wilkinson, J.). Although a delay in satisfaction of their state court judgments on state law claims may be frustrating to Petitioners, that does not transform their claims into a cognizable federal taking.

To afford Petitioners the relief they seek, this Court would necessarily have to overrule or abrogate *Folsom*. But at no time, even in their Petition for Writ of Certiorari, have Petitioners argued that *Folsom* was wrongly decided or that it should be abrogated in any way. Indeed, their Petition does not even cite *Folsom*. Accordingly, any such argument—in addition to being meritless—was waived and thus should not be considered by this Court. *See e.g.*, *Sprietsma v. Mercury Marine*, 537 U.S. 51, 56 n. 4 (2002).

This Court's recent decision in *Knick v. Township of Scott*, 139 S.Ct. 2162 (2019), does nothing to advance Petitioners' claims. Petitioners are not the first claimants to attempt to expand *Knick* to create a new species of federal takings claim. But "*Knick* concerns when a takings claim becomes ripe as a procedural matter—

not what constitutes a 'taking' as a substantive matter." *Preston Hollow Capital, LLC v. Cottonwood Dev. Corp.*, 23 F.4th 550, 554 (5th Cir. 2022). Petitioners' novel theory that a delay in paying state court judgments on state law claims in and of itself constitutes a secondary federal taking has no basis in law.

In fact, Petitioners' argument is in many ways at odds with *Knick* and would render much of its holding superfluous. In eliminating the exhaustion requirement and holding that a federal takings claim is ripe at the time of the taking, this Court now lets plaintiffs bring federal takings claims in federal court and avoid the "*San Remo* preclusion trap"[1] that made many federal takings claims impossible. *See Knick*, 139 S.Ct. at 2167; *see also infra* Part IV. But Petitioners argue that the same ends can be achieved by bringing state law takings claims in state court, and then having a federal court enforce the state court judgments as if they were rendered by federal courts adjudicating federal rights. If this were true, then there would not have been a "*San Remo* preclusion trap" in the first place, and *Knick* resolved a problem that never existed.

In sum, the inability for Petitioners to collect when they want on state court judgments on state law claims does not in and of itself amount to a federal taking. *See Folsom*, 109 U.S. at 289. And in no way did the underlying money judgments vindicate federal rights or

[1] "He cannot go to federal court without going to state court first; but if he goes to state court and loses, his claim will be barred in federal court." *Knick*, 139 S.Ct. at 2167.

causes of action. Thus, the issue whether a State entity may delay payment on a judgment vindicating federal rights is not before the Court.[2]

III. The Decision Below Does Not Conflict With This Court's Precedent or Create a Circuit Split

Because Petitioners do not allege a cognizable federal taking, none of this Court's "just compensation" jurisprudence is implicated here. For instance, Petitioners cite *Bragg v. Weaver*, 251 U.S. 57 (1919), for the proposition that just compensation requires "certain payment of the compensation without unreasonable delay." *Id.* at 62. The claim in *Bragg* concerned a Virginia statute that authorized the State to take earth

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[2] But even if their underlying judgments had vindicated federal rights, Petitioners do not explain why a delay in paying a judgment based on federal rights should be treated differently than judgments (such as here) based solely on state rights. As the Fifth Circuit observed:

> Plaintiffs do not explain why the legal right underlying a judgment would create this additional property right for some judgments and not others, and it remains unclear to us. It seems that a judgment compensating someone for a breach of contract should confer no less a property interest than a judgment compensating someone for the police's excessive force.

App. A-7. This observation is consistent with the Federal Circuit's approach to improperly levied taxes. Even when the ***federal government*** exceeds its authority in levying a tax, that does not amount to a taking. *See U.S. Shoe Corp. v. United States*, 296 F.3d 1378, 1383-84 (Fed Cir. 2002), cert. denied, 538 U.S. 1056 (2003); *see also Lafaye v. City of New Orleans*, 35 F.4th 940, 943 (5th Cir. 2022).

from private property to repair a public road. *Id.* at 58. Thus, there was no question whether a federal taking had occurred in *Bragg*. But for the reasons outlined above, a delay in payment is not itself a taking, so *Bragg* is inapposite. Petitioners' reliance on *Joslin Manufacturing Co. v. Providence*, 262 U.S. 668 (1923) is equally unavailing. *Joslin* concerned a request for injunctive relief and discussed in dicta when payment must be made on a federal taking. *Id.* at 677-78. But *Joslin* does not address whether—much less support Petitioners' position that—failure to immediately pay a state court judgment constitutes a "secondary" federal taking. Indeed, such a holding would be wholly inconsistent with *Folsom*.

The decision below adheres to *Folsom* and is consistent with decades of Fifth Circuit precedent applying *Folsom*. *See*, *e.g.*, *Minton*, 803 F.2d at 132; *Freeman Decorating Co. v. Encuentro Las Americas Trade Corp.*, 352 F. App'x 921, 924 (5th Cir. 2009) ("the property right created by a judgment against a government entity is not a right to payment at a particular time, but merely the recognition of a continuing debt of that government entity"); *Guilbeau v. Par. of St. Landry*, 341 F. App'x 974, 974-75 (5th Cir. 2009). Only months after deciding this case, an entirely different panel of the Fifth Circuit reaffirmed the same principle in another state takings case: "We answer in the negative the certified question whether the failure to comply with a state court judgment may be construed as a taking." *Lafaye v. City of New Orleans*, 35 F.4th 940, 945 (5th Cir. 2022). The fact that no judge sought a poll whether

to rehear this case *en banc* further underscores the firm legal footing of the decision below.

The Petition also identifies no circuit split. To the contrary, the other circuits that have addressed this type of argument have recognized *Folsom* and its holding that a delay in paying a judgment does not constitute a taking. *See Hammond v. United States*, 786 F.2d 8, 12 (1st Cir. 1986); *Ostipow v. Federspiel*, 824 F. App'x 336, 343, 345 (6th Cir. 2020) (citing *Folsom* for proposition that "there is no right to instantaneous satisfaction of a judgment when a governmental entity is involved"); *Williamson v. Chicago Transit Auth.*, 185 F.3d 792, 795 (7th Cir. 1999) ("the failure of a unit of state or local government to make payment on either a judgment award or settlement agreement does not give rise to a due process claim") (following *Evans*, 10 F.3d at 481); *see also Biser*, 991 F.2d at 105 n. 2 ("Every state court judgment does not provide a would-be plaintiff with a cognizable property right under 42 U.S.C. § 1983, and every alleged delay in the enforcement of the mandate does not provide a plaintiff with a claim of deprivation without due process of law.").

Contrary to what Petitioners suggest in their Supplemental Memorandum, *Financial Oversight & Management Board v. Cooperativa de Ahorro y Credito*, 41 F.4th 29 (1st Cir. 2022), does not evidence a circuit split. In that bankruptcy case, there was no dispute whether a federal taking had taken place. Instead, the dispute concerned the Board's plan to treat certain types of federal takings claims differently and offer less than full compensation. *See id*. at 38. By contrast,

as noted above, the issue here is whether a delay in satisfying state court judgments vindicating state takings claims in and of itself constituted a "secondary" taking under federal law. *Folsom* unambiguously answered that question in the negative. *No* circuit has held otherwise.

In short, this Court need not expend its limited resources on issues where there is unanimity among the lower courts and its own precedent.

IV. Petitioners Do Not Present an Issue Likely to Recur

Review by this Court is also unwarranted because recent jurisprudence makes it unlikely that future litigants would find themselves in Petitioners' situation. As discussed above, *Knick* overruled *Williamson County*'s exhaustion requirement and thus now allows litigants to bring federal takings claims as soon as the taking has occurred.

Should future property owners find themselves with inverse condemnation claims like Petitioners, they can bring federal takings claims from the beginning. Whether Petitioners (unlike the plaintiff in *Knick*) felt foreclosed from doing this by *Williamson County* or had strategic reasons to initially stay in state court, Petitioners chose to fully litigate their state takings and tort claims without any federal claims in their underlying litigation. Under this Court's precedent, "a state court's resolution of a claim for just compensation under state law generally has

preclusive effect in any subsequent federal suit." *Knick*, 139 S.Ct. at 2167 (citing *San Remo*, 545 U.S. 323).

But now that there is no longer a state exhaustion requirement, federal takings claims can be asserted in the underlying action, which would result in a judgement asserting federal takings claims—the actual scenario Petitioners try to (incorrectly) present here. When such a case arises, this Court will have an opportunity to properly address the arguments Petitioners and amici raise here. But that case is not here today.

V. Petitioners' Desired Outcome Would Create Chaos

If it were to reverse the Fifth Circuit's decision and rule in favor of Petitioners, this Court would be announcing a rule that makes federal courts overseers and enforcers of state court judgments that lack any federal interest. The federal judiciary has always avoided such an inappropriate role. "[F]ederal courts should not . . . become embroiled in a party's attempt to enforce . . . state court judgments and settlement agreements against states and municipalities." *Williamson*, 185 F.3d at 795 (citing *Mid-American Waste Sys., Inc. v. City of Gary*, 49 F.3d 286, 290 (7th Cir. 1995)).

Louisiana is not the only State that prohibits or limits the seizure of its assets to satisfy money

judgments.[3] These limits are a proper exercise of a State's sovereign immunity and an important mechanism for it to control its public funds. Indeed, this exercise of sovereign immunity by States mirrors what has been federal law for over 175 years. *See Buchanan v. Alexander*, 45 U.S. (4 How.) 20 (1846) (sovereign immunity barred efforts by a seaman's creditors to attach his wages while still in the hands of a disbursing official under the Secretary of the Navy). State entities must budget and allocate their funds to best serve their constituents. While they are bound to eventually pay money judgments entered against them, it is critical that they retain the ability to prioritize their expenditures. Forcing a State entity to pay all judgments immediately would divest funds from other programs that citizens rely on. For some, this is truly life and death. *Folsom* strikes the appropriate balance. The State is obliged to pay, but payment cannot be demanded immediately. In Louisiana, citizens can

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[3] *See*, *e.g.*, Calif. Code of Civ. Proc. § 699.720(a)(5) ("A debt (other than earnings) owing and unpaid by a public entity" is "not subject to execution."); Fla. Stat. Ann. § 55.11 ("No money judgment or decree against a municipal corporation is a lien on its property nor shall any execution or any writ in the nature of an execution based on the judgment or decree be issued or levied."); Ga. Code Ann. § 50-21-34 ("Nothing in this article shall be construed to authorize any execution or levy against any state property or funds. Execution or levy against state property or funds is expressly prohibited."); N.Y. Civ. Prac. Law & Rules § 5207 ("None of the procedures for the enforcement of money judgments are applicable to a judgment against the state."); Pa. Cons. Stat. Ann. § 8559; Tex. Civ. Prac. & Rem. Code ch. 109; Wash. Rev. Code Ann. § 4.92.040(1) ("No execution shall issue against the state on any judgment.").

petition their elected officials to appropriate funds to pay their judgments; and if the legislators refuse, citizens can elect ones who will. A departure from this regime, which has been relied upon for over a century, would cause incredible disruption and dire consequences throughout the nation.

CONCLUSION

The courts below carefully and correctly assessed the precise claim asserted by Petitioners. Although the result may be difficult for some to accept, the legal question is not difficult. Delay in payment of a state court judgment on state law claims does not constitute a federal taking. This Court has already addressed that question in *Folsom* and has no reason to reverse course after so many years of reliance by State entities. A contrary result would beget chaos and uncertainty throughout the country.

The petition for a writ of certiorari should be denied.

Respectfully submitted,

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