

IN THE SUPREME COURT OF THE UNITED STATES

No. 22-913

RICHARD DEVILLIER, ET AL., PETITIONERS

v.

STATE OF TEXAS

ON WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE FIFTH CIRCUIT

MOTION OF THE UNITED STATES
AS AMICUS CURIAE SUPPORTING RESPONDENT
FOR LEAVE TO PARTICIPATE IN AND FOR DIVIDED ORAL ARGUMENT

Pursuant to Rules 21, 28.4, and 28.7 of the Rules of this Court, the Solicitor General, on behalf of the United States as amicus curiae supporting respondent, respectfully moves that the United States be granted leave to participate in the oral argument in this case, and that the time be allotted as follows: 30 minutes for petitioners, 20 minutes for respondent, and 10 minutes for the United States. Respondent consents to this motion.

The question presented in this case is whether the Fifth Amendment, as incorporated against the States through the Four-

teenth Amendment, provides a cause of action for compensation or damages against a State based on the State's alleged taking of private property for public use without just compensation.

The United States has a significant interest in the question presented because it implicates when the federal government may itself be sued for alleged takings of property. The Fifth Amendment's Takings Clause operates "solely as a limitation on the exercise of power by the government of the United States." Barron v. Mayor of Baltimore, 32 U.S. (7 Pet.) 243, 250-251 (1833) (Marshall, C.J.). The Fifth Amendment continues to apply against only the United States even though, in 1897, this Court determined that the Fourteenth Amendment's application of the requirement of "due process of law" to the States also "requires compensation to be made or adequately secured to the owner of private property taken for public use under the authority of a State." Chicago, Burlington & Quincy R.R. v. Chicago, 166 U.S. 226, 235-241 (1897).

The United States additionally has a significant interest in the sound development of the constitutional principles underlying the question presented. The Court's articulation of those principles in the Fourteenth Amendment context may have a direct effect on the United States. Section 5 of the Fourteenth Amendment also expressly vests in Congress the authority to enact legislation enforcing the provisions of that Amendment, as it has done in enacting 42 U.S.C. 1983.

The United States has often participated in oral argument as amicus curiae in cases involving the proper interpretation of the Fifth Amendment's Takings Clause. See, e.g., Tyler v. Hennepin Cnty., 598 U.S. 631 (2023); PennEast Pipeline Co. v. New Jersey, 141 S. Ct. 2244 (2021); Knick v. Township of Scott, 139 S. Ct. 2162 (2019); Murr v. Wisconsin, 582 U.S. 383 (2017); Koontz v. St. Johns River Water Mgmt. Dist., 570 U.S. 595 (2013); Stop the Beach Renourishment, Inc. v. Florida Dep't of Env'tl. Prot., 560 U.S. 702 (2010). We therefore believe that oral presentation of the views of the United States would be of material assistance to the Court.

Respectfully submitted.

ELIZABETH B. PRELOGAR
Solicitor General
Counsel of Record

DECEMBER 2023