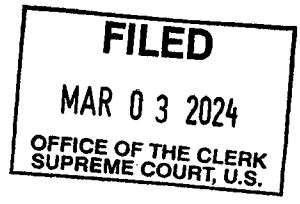
No. 23-7444 ORIGINAL

IN THE

SUPREME COURT OF THE UNITED STATES



In re:

CAROLYN J. FLORIMONTE,
Petitioner

v.

BOROUGH OF DALTON,
Respondent

ON PETITION FOR AN EXTRAORDINARY WRIT OF MANDAMUS TO THE SUPREME COURT OF PENNSYLVANIA

PETITION FOR AN EXTRAORDINARY WRIT OF MANDAMUS

Carolyn J. Florimonte
Pro se Petitioner
P. O. Box 375
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(570) 561-0526

QUESTIONS PRESENTED

I. Is twenty-four (24) years, enough time for Petitioner to wait for the right to control her own Property, which never comes; to wait in despair for relief from the lower courts, which conflict in application, which never comes; to wait for just compensation from the courts, which never comes; to wait for physical protection from the courts, which never comes as Respondent continues to artificially, maliciously, intermittently flood Petitioner's Property, by supersaturation year after year, thus affecting every aspect of Petitioner's life, preventing her right to sell her home, repeatedly damaging her home and land, draining her savings and causing two serious injuries resulting directly from Respondent's unconstitutional takeover and flooding of her Property?

II. Is it only with this Court's intervention, that Petitioner will be free of the forced servitude, safety risk and suffering caused by Respondent's repeated, artificial, illegal, willful, malicious, supersaturating, continuing trespass flooding of her Property year after year, for twenty-four years, for which the lower courts, in direct conflict with settled law, have refused to stop and/or provide just compensation?

LIST OF PARTIES

[x] All parties appear in the caption of the case.

RELATED CASES

Florimonte v. Borough of Dalton, No. 85 MM 2023 (APPENDIX A)

Supreme CT of Pennsylvania, Middle District

Florimonte v. Borough of Dalton 2022 CV 03622. (APPENDIX D)

Florimonte v. Borough of Dalton, No. 987 C. D. 2012 (APPENDIX E)

Florimonte v. Borough of Dalton, 2003 EQ 60011. (APPENDIX F)

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CONSTITUTIONAL & STATUTORY PROVISIONS INVOLVED

Except as hereinafter provided no person shall, for any indictable offense, be proceeded against criminally by information, except in cases arising in the land or naval forces, or in the militia, when in actual service, in time of war or public danger, or by leave of the court for oppression or misdemeanor in office. Each of the several courts of common pleas may, with the approval of the Supreme Court, provide for the initiation of criminal proceedings therein by information filed in the manner provided by law. No person shall, for the same offense, be twice put in jeopardy of life or limb; *nor shall private property be taken or applied to public use, without authority of law and without just compensation being first made or secured. (Emphasis added).*

Neither the Commonwealth nor any political subdivision thereof shall deny to any person the enjoyment of any civil right, nor discriminate against any person in the exercise of any civil right. (Emphasis added).

Pennsylvania Consolidated Statutes:

"Local agency." A government unit other than the Commonwealth government. The term includes, but is not limited to, an intermediate unit; municipalities cooperating in the exercise or performance of governmental functions, powers or responsibilities under 53 Pa.C.S. Ch. 23 Subch. A (relating to intergovernmental cooperation); an councils of government and other entities created by two or municipalities under 53 Pa.C.S. Ch. 23 Subch. A.

§ 8542. Exceptions to governmental immunity.

(b) Acts which may impose liability.–The following acts by a local agency or any of its employees may result in the imposition of liability on a local agency:

(4) Trees, traffic controls and street lighting.–A dangerous condition of trees, traffic signs, lights or other traffic controls, street lights or street lighting systems under the care, custody or control of the local agency, except that the claimant to recover must establish that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred and that the local agency had actual notice or could reasonably be charged with notice under the circumstances of the dangerous condition at a sufficient time prior to the event to have taken measures to protect against thecondition.

(6) Streets.–
(i) A dangerous condition of streets owned by the local agency, except that the claimant to recover must establish that the dangerous condition created a reasonably foreseeable risk of the kind of injury which was incurred and that the local agency had actual notice or could reasonably be charged with notice under the circumstances of the dangerous condition at a sufficient time prior to the event to have taken measures to protect against the dangerous condition.

42 Pa. C. S. Chapter 85 Subchapter C, § 8550, Willful Misconduct

§ 8550, ***Willful misconduct.***
In any action against a local agency or employee thereof for damages on account of an injury caused by the act of the employee in which it is judicially determined that the act of the employee caused the injury and that such act constituted a crime, actual fraud, actual malice or willful misconduct, the provisions of sections 8545 (relating to official liability generally), 8546 (relating to defense of official immunity), 8548 (relating to indemnity) and 8549 (relating to limitation on damages) shall not apply.

Complaint, 2022–CV-3622, did not contain any federal claims.

However, since the matter is now before this Federal Court, the following may apply in its disposition:

Amendments to the Constitution of the United States:

No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, *nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation. (Emphasis added).*

Section 1

All persons born or naturalized in the United States, and subject to the jurisdiction thereof, are citizens of the United States and of the State wherein they reside. *No State shall make or enforce any law which shall abridge the privileges or immunities of citizens of the United States; nor shall any State deprive any person of life, liberty, or property, without due process of law; nor deny to any person within its jurisdiction the equal protection of the laws. (Emphasis added).*

The Acts of the legislature of any State, Territory, or Possession of the United States, or copies thereof, shall be authenticated by affixing the seal of such State, Territory or Possession thereto The records and judicial proceedings of any court of any such State, Territory or Possession, or copies thereof, shall be proved or admitted in other courts within the United States and its Territories and Possessions by the attestation of the clerk and seal of the court *annexed, if a seal exists, together* with a certificate of a judge of the *court that the said attestation is in proper form. Such Acts, records and judicial proceedings or copies thereof, so authenticated, shall have*

the same full faith and credit in every court within the United States and its Territories and Possessions as they have by law or usage in the courts of such State, Territory or Possession from which they are taken.

RULES

The following are not excluded by the rule against hearsay, regardless of whether the declarant is available as a witness:

(1) Present Sense Impression. A *statement describing or explaining an event or condition, made while or immediately after the declarant perceived it.*

(2) Excited Utterance. A statement relating to a startling event or condition, made while the declarant was under the stress or excitement that it caused.

TABLE OF AUTHORITIES CITED

IN THE

SUPREME COURT OF THE UNITED STATES

PETITION FOR AN EXTRAORDINARY WRIT OF MANDAMUS

Petitioner respectfully prays that a Petition for an Extraordinary Writ of Mandamus issue to review the judgments below.

OPINIONS BELOW

[x] For cases from state courts:

The ORDER of the highest state court to review the merits appears at Appendix _A_ to the petition and is

[x] unpublished

The Opinion of the Civil Court of Lackawanna County to review the merits appears at Appendix _C_ and is

[x] unpublished

JURISDICTION

[x] For cases from state courts:

The date on which the highest court decided my case was November 6, 2023.

A copy of that Order appears at Appendix A .

[x] An extension of time to file the petition for a writ of certiorari was granted to and including April 4, 2024 on January 23, 2024. in Application No. 23A671.

The jurisdiction of this court is invoked under 28 U. S. C. § 1257(a),

> **(a) Final judgments or decrees rendered by the highest court of a State in which a decision could be had, may be reviewed by the Supreme Court by writ of certiorari where the validity of a treaty or statute of the United States is drawn in question or where the validity of a statute of any State is drawn in question on the ground of its being repugnant to the Constitution, treaties, or laws of the United States, or where any title, right, privilege, or immunity is specially set up or claimed under the Constitution or the treaties or statutes of, or any commission held or authority exercised under, the United States.**

and 28 U. S. C. § 1651 (a),

> **(a) The Supreme Court and all courts established by Act of Congress may issue all writs necessary or appropriate in aid of their respective jurisdictions and agreeable to the usages and principles of law.**
>
> **(Issuance by the Court of an extraordinary writ authorized by by U. S.C. § 1651 (a) is not a matter of right, but of discretion sparingly exercised. To justify the granting of any such writ, the petition must show that the writ will be in aid of the Court's appellate jurisdiction, that exceptional circumstances warrant the exercise of the Court's discretionary powers, and that adequate relief cannot be obtained in any other form or from any other court).**

RELEVANT PROVISIONS INVOLVED

The Constitution of the Commonwealth of Pennsylvania provides that government may not take private property for public use without due process and compulsory just compensation.

Following are the controlling Amendments to the Constitution of the Commonwealth of Pennsylvania supporting Petitioner's claims for relief: § 1. Inherent rights of mankind; § 6. Trial by jury; §10. Initiation of criminal proceedings; twice in jeopardy; eminent domain; § 26. No discrimination by Commonwealth and its political subdivisions.

Following are the Pa. Consolidated Statutes violated by Respondent:
42 Pa. C. S. Chapter 85 Subchapter A, Section 8501. "Local Agenc;"
42 Pa. C. S. Chapter 85 Subchapter C, Section 8542. "Exceptions to Governmental Immunity" (b) (4) Trees and (b) (6) Streets;
42 Pa. C. S. Chapter 85 Subchapter C, Section 8550. Willful Misconduct.

The original complaint relied only on state claims, there were no federal claims in Complaint 2022-CV-3622.

This Petition relies on the Fifth and Fourteenth Amendments to the Constitution of the United States, as well as on the full faith and credit clause in 28 U.S.C. 1738.

STATEMENT OF THE CASE

Note: Pet. App. and page number refer to Petition Appendix pages, indicating issues previously raised or supporting the Petition.

A. Foreword

The knowledge of illegality in this case is derived from real estate law Petitioner followed, as a licensed real estate agent in Pennsylvania.

The magnitude of the destruction of property, home, physical and emotional health of Petitioner, during a forced servitude and lack of safety in her own home, for twenty-four years of flooding, cannot be overstated.

In September, 2023, Petitioner, Carolyn J. Florimonte was injured by the severe flooding which Respondent the Borough of Dalton, with ill will causes to invade her Property at 219 Third Street, Dalton, PA, by refusing to provide catch basins to Third Street. Surrounding streets which never flood have catch basins but not Third Street. Florimonte's fall caused internal injuries and a hematoma. Now experiencing symptoms of aphasia, she must sell her home to move near her relatives for care. However, that is impossible unless this Court acts to end twenty-four years of flooding and servitude that the Borough has forced upon her. *This is a taking.*

There are few examples of takings in the United States, which involve an outright physical occupation of private property by a local government, which then denies responsibility for a taking, because U. S. governments, large and small correctly recognize the liability incurred when the laws

which prohibit such a taking are defied. In many instances, the offending structures are exterior to the property and cause an overflow of flooding. Not so for the first thirteen (13) years in this case, when the Borough physically occupied Lot # 17 of the Property, with two 18" pipes spewing artificially directed, uncontained flooding, in violation of the following, as described in the Appendices: Constitution of the Commonwealth of Pennsylvania, Amendments: §1. Inherent rights of mankind; §10. Initiation of criminal proceedings; twice in jeopardy; eminent domain; §26. No discrimination by the Commonwealth and its political subdivisions.

Nor have most plaintiffs had to overcome a presiding judge's grave miscarriage of justice decisions, tainted by his caustic prejudice against pro se litigants. In direct opposition to the sworn testimony of Florimonte, *(Pet. App. 114-116),* and all filings in the case, stating that the Borough did not have permission to dig the 2001, trench, the judge falsely stated that she had approved the trench which had been illegally dug across the Property by the Borough, he then determined that there was no trespass.

This was done with a specific intent to dismiss Complaint, 2003-EQ-60011, *(Pet. App. 88-97),* for trespass and negligence filed by counsel on behalf of Florimonte, despite the judge having walked the site of trespass, Lot # 17, on May 1, 2009, (directly after the close of Injunction testimony) *(Pet. App. 68-69),* and then seen the two massive pipes, one at the very edge of and one *directly on the Property* which artificially delivered storm

water, sump pump water and contractor effluent to the Property, which then wended its way over land ditches to pollute the creek below.

Resorting to overt pro se litigant discrimination in his decision the the judge recounts the same comments he made to Florimonte, at every opportunity, after she became pro-se. *(Pet App. 162-178).*

In dismissing the Complaint of 2003, the judge gave the entire small Property over to the Borough, to flood at will. *(Pet. App.162-178).* Since then believing it will never be held accountable for a taking, the Borough has been emboldened year after year to flood the Property without cease.

The Borough has tried in every possible way to deny any responsibility for its unconstitutional, corrupt actions for the last twenty-four (24) years and prior years, which now bring this instant case before the Court.

It is not enough to claim a prescriptive easement, which the Borough insisted it had, while failing to comply with any of the requirements for such a claim. Hidden pipes, specifically, negate that assertion.

In 2012, Florimonte's pro se appeal to the Commonwealth Court of Pennsylvania, resulted in the 2013, removal of the two Borough pipes from the Property, but no just compensation for the thirteen-year occupation, massive flooding and servitude inflicted by the Borough was provided, though at Trial in 2011, Florimonte requested monetary compensation for those years, which is a legal option for any trespass. *(Pet. App.79-80).*

Florimonte could not claim a taking during Trial, because that claim

had not been included in Complaint 2003-EQ-60011. *(Pet. App. 88-97).*

The Commonwealth Court's reasoning in denying any compensation was that the Borough had not admitted responsibility for installing the pipes, therefore, no duty was owed to Florimonte. *(Pet. App. 79-80).*

Credible Injunction testimony by Robert Fisher *(Pet. App. 158),* of April 3, 2009, *provided in the Appeal of 2012,* and in this Petition proved that the Borough was, indeed, responsible for the invasion and unconstitutional installation of the pipes on the Property. Therefore, admittance of the act was not necessary. *(Pet App. 79-80).*

The first serious injury occurred in 2005, when Florimonte received a blow to the head from a heavy branch falling from a dead tree, killed when the illegal trench was dug by the Borough through the Property, front to back. The trench was dug, without permission, in 2001, *(Pet. App.114-116).*

When the 2005, injury occurred, the Borough was immediately informed in writing. That injury caused two compression fractures in Florimonte's neck and shortened her stature by two (2) inches as a bone scan revealed. The Borough ignored the notice of injury, then hired two new counsel.

The second injury occurred during the destructive September, 2023, flooding, as Florimonte was pulling sixty (60) lbs. sandbags in front of her garage, which faces the street. The storm water forcefully entered the garage causing her to lose her balance, then fall onto the trailer hitch of her car and then hit her head on the garage pavement, causing injury as

well as a hematoma to her head, both of which her physician will verify. This has been followed by ongoing illness, medical appointments and tests, as well as symptoms of aphasia and an impending surgery. Florimonte has lost stature again but is lucky not to have been paralyzed by the fall. Her adult stature has always been five feet five and one-half inches (5' 5 ½") and she does not have osteoporosis. After the two injuries, she is now five feet two inches (5' 2") tall. Florimonte's advanced age causes worry that the next injury may be fatal.

Again and again, Florimonte has turned to the Courts, both state and federal, only to be denied any help, over and over, therefore, this Court is her last hope of finally being able to control the Property which she owns.

For twenty-four (24) years Florimonte, has suffered an unending taking and destruction of the land, home, barn, trees, flora and fauna, on her Property by the Borough. At no time has Florimonte ever been made whole as the yearly intermittent flooding of her Property has never ceased.

B. The Property

The Property consists of three lots, #16, #17, and #30, conveyed as one parcel, Each lot is one hundred feet by two hundred feet (100' x 200') which Petitioner purchased in May, 2000, partially as an investment with the possibility of obtaining a variance to sell the additional two lots in the future. The parcel is one and one third (1 1/3) acres in size. Prior to sale, the sellers signed a *Disclosure Statement stating there was no flooding on*

the Property, on March 4, 2000. (Pet. App. 161).

C. History of the taking 1982 to 2000

The Hedricks purchased the Property in 1982. (*Pet App. 94*). They came home one day to find that the Borough had installed a pipe on their land without notice or permission. *(Pet App. 158)*. The Hedricks complained. The Borough wanted the Hedricks to sign a document deeding a portion of the Property to the Borough for one dollar ($1.00) The Hedricks refused. Nothing further was done and the flooding continued.

The heavily overgrown Lot #17, was taken by the Borough to install and hide two 18" pipes, without notice, eminent domain proceedings or just compensation.

D. Purchase of the Property in 2000

The Hedricks falsely signed a Disclosure Statement denying flooding on the Property. (*Pet App. 161*). At no time prior to sale did they disclose flooding on the Property. The sales agreement was conditional upon the Hedrick's right to remove various plants and flowers from the Property after closing. That removal occurred in June, 2000. When they arrived, Florimonte questioned them about the flooding she had discovered – they responded that it was the reason that they had sold the Property. By that time, the Borough Manager had promised to "fix the problem." Had Florimonte known that promise was untrue, she could have sued and reversed the sale for fraud by the Hedricks.

By the time, the Borough stated, in late June, 2002, that it was not the Borough's problem, it was more than two years after the sale had closed.

Prior to purchase, Florimonte hired Pillar to Post to inspect the house and land. For mortgage approval, an appraisal was ordered. In 2001, a survey was performed by Hennemuth Surveyors. The two 18" pipes were so well hidden on the Property by the Borough that they were not visible to any of these individuals.

E. History of the Flooding from May, 2000, to March 4, 2003

To obtain a mortgage in 2000, the bank required that the buyer must repaint the entire exterior of the home. This was done by Florimonte immediately after purchase, therefore, she knew every inch of the siding and fascia of the home. (The fascia was in perfect condition but that would change in 2005, as flooding overtook the Property, causing heaving of the entire house, resulting in separation of the fascia and entry of rodents.)

To mow the Property, a new Toro lawn mower was purchased. During the first mowing, the Toro became stuck in mud. Neighbors helped extract the mower. This problem persisted so Florimonte searched for a reason. A large hidden pipe was discovered. The Borough was called. The Borough Manager responded by arriving with promises to "fix the problem"

In 2001, without indication of resolution by the Borough, Florimonte again called to ask why the problem was ongoing. Again, the Manager visited. During this visit, he *demanded an easement*, to which Petitioner

agreed, *conditional on preparation of a legal document by the Borough's solicitor, which would then be recorded at the Courthouse.* At the same time, the Manager informed Florimonte of a *second well-hidden half-buried pipe on the Property*, then showed her the location. He couldn't possibly have known about the second pipe unless the Borough was responsible for installation of the pipes.

Solutions to the flooding were discussed. Florimonte ordered a survey to establish boundaries for future easement placement of the pipes. Leaving for work the next day, Florimonte saw several Borough personnel and believed they were there to measure for pipe placement. Without discussion or Florimonte's *approval or knowledge*, they dug an illegal trench on Lot # 17, bisecting it front to back, from the rest of the Property, despite the fact that no easement document had been prepared, signed or recorded at the Courthouse. An easement is ten to fifteen (10-15) feet wide, not an entire lot.

Florimonte complained and nothing further was done to end the storm water and sump pump water gushing from the two pipes. The Borough had asked "What has Plaintiff done to alleviate the problem." So Florimonte began clearing lot #17, by hand, in hopes of finding a way to contain the flooding pouring onto her land. She found hard packed earth on which nothing was growing except trees – no grass or weeds anywhere.

F. Robert Fisher's description of the taking by the Borough

In 2005, Florimonte and Robert Fisher, now deceased, former Dalton Fire Chief, who owned a home on Second Street, below Third Street, were discussing the flooding, which also affected his home and land. Fisher became angry when he saw a member of Borough Council slowly driving by to view flooding on cleared Lot # 17. Pursuant to Federal Rules of Evidence Rule 803 Exceptions to the Rule against Hearsay (2), in an excited utterance, he revealed how the Borough, in the 1980's, destroyed the former wetland now known as 224 Third Street, Dalton, PA, to benefit the President of Dalton Borough Council, who wanted to sell the lot for building purposes. Fisher said, "The Borough brought in truck load after truck load of dirt to fill the wetland. I was there and watched them while they were doing it."

This instant matter is similar to *Cassel-Hess v. Hoffer, 44 A.3d 80, 82, n.6 (Pa. Super. Ct. 2012):*

> **According to the complaint, prior to 2003, a protected wetland ran alongside the eastern border of Appellees' 4507 North Front Street property. *Id.* at ¶ 4. 82 In 2003, however, Appellees began to construct a commercial office building on 4507 North Front Street and, during the construction of this building, Appellees filled the wetlands with soil. *Id.* at ¶ 5. As a result of the filling of the wetlands, Appellant avers, land to the south and north of Appellant's property began to flood. *Id.***

Apart from the former Dalton wetland being located across the street from 219 Third Street, this case resembles Florimonte's, where filling of a wetland caused and continues to cause flooding on the Property.

G. Conversion of a wetland

Prior to destruction of a wetland, a study and approval must be sought from the U. S. Army Corp. of Engineers and an alternative site of equal or larger size must be provided to accommodate the water which is displaced by destruction of that wetland.

The Borough, in defiance of all state and federal laws protecting private property owners, designed an intricate system of pipes to artificially force storm water, sump pump water and contractor effluent onto lot # 17. The lot was overgrown out to the road so it was easy for the Borough to hide the two pipes, and then unleash the storm water without constraint.

In this case, the Borough followed none of the required procedures, specifically to avoid the costs. The Borough did not seek approval for the alteration of the wetland - instead truckloads of dirt were brought in to make the wetland viable as a building site. Rather than paying to provide an alternate site for the displaced wetland water, the Borough decided to "take" lot # 17, Third Street, Dalton, PA, by installing two huge, hidden pipes on that lot, without providing just compensation to the owners.

H. The Pipes

To avoid costs of a required storm water management study and its implementation, the Borough circumvented the law requiring just compensation for land taken for public use. A new development known as Huntington Woods, in the acreage uphill from Third Street, was just in

the initial stages of construction so the Borough created its own system of pipes, defying the Commonwealth of Pennsylvania's Constitution.

The first series of pipes *(unknown, hidden and not removed until 2018)* channeled water, from the uphill Huntington Woods development, to behind a hidden area of a stone wall at the back of 224 Third Street (the former wetland) which was then piped underground to a commercial sump pump in the front yard of 224 Third Street, which then forced the storm water, sump pump water and contractor effluent under Third Street, onto lot #17. Florimonte began to find small cut pieces of brick on that lot.

The Borough's secondary pipe system originated at the top of Third Street, crossing under the street and underground, then emerging *twenty-three feet into and onto lot # 17. Florimonte was unaware of this pipe until 2001, when the Borough Manager informed her of its existence, then showed her the location of the pipe. He could only have known of the second pipe if it was installed and completely hidden by the Borough.*

During the next thirteen (13) years, Florimonte was repeatedly blamed for the problem. After clearing lot # 17, the Borough claimed that she had caused an increase in the velocity of the water when, in fact, the problem was an ever-increasing volume of storm water being forced onto the lot, from new construction in Huntington Woods.

I. The House

The house was formerly a barn, built on a slab foundation and part

of a working farm. In the 1950's, the barn was converted to a summer home, by Otto Schmidt, who then sold to the Hedricks in October, 1982. ***(Pet. App. 94).***

The former barn has retained its cinderblock frame which was later covered with T-111 siding during conversion to a home. Believing the signed Disclosure Statement ***(Pet. App. 161)*** **that there was no flooding, Petitioner built a stone wall, during 2000-2002, which was tilted slightly forward to avoid any storm runoff from the roof, around the exterior of the house. Behind the stone wall two-inch pink board insulation was first installed to provide a barrier to cold and prevent any animals which might try to gain entry.**

J. Injunction Testimony by Robert Fisher. (Pet. App. 149-160).

1. Robert Fisher testified on April 3, 2009, that, when the Hedricks came home one day and found that the Borough had installed a pipe, on their land, "they were mad." ***(Pet App. 158).***

2. The deed of May 5, 2000, indicates purchase of the Property by the Hedricks in 1982, without stipulation of any easements. ***(Pet App. 93-97).*** **Note: Any and all easements must be specified in the Chain of Title.**

K. Injunction Testimony by Engineer for Florimonte (Pet. App. 129-148).

In anticipation of providing an easement in 2007, Florimonte hired a Civil Engineer, Dennis Peters to provide an opinion as to the cause and effects of the flooding of the Property. Peters testified during the

Injunction Hearing of April 3, 2009, *(Pet App. 129-148).*

Peters also prepared a solution which would cause the least invasive fix for the problem while containing the flooding flowing all over the Property. The proposal was to connect and bury the pipes along the upper edge of Lot # 17. From there the water would be piped to the back of Lot #17, then empty into an existing channel. New piping in that channel, would contain and direct the water into more new piping, which would line an already existing channel alongside Robert Fisher's land on Second Street (which is directly below Florimonte's Property).

Storm water would then be piped under Second Street into an existing channel to Fuller Road, which would also be lined with new pipe, then to the creek below. This is the very path the storm water was already using but without any piping to contain the spewing of storm water everywhere.

The Borough fought this solution, instead wanting to keep the pipes on the surface of the lot, in effect, diminishing the value of Lot #17 to *zero,* making it forever, unsuitable for a possible sale in the future.

The Borough Engineer proposed that the pipes would travel across Lot #17, above ground to the back of Lot #17, then storm water would be unleashed into the channel which ran alongside Fisher's property. Florimonte would not agree to the Borough's solution, which would devalue Lot #17 to zero and further distress Fisher's property.

Counsel for Florimonte was angry when she would not agree to that

solution and said he did not care that the effect of such a solution would bury Fisher's home and land in storm water.

L. History of the Legal Process since 2002

1. After learning in 2002, that the Borough would not fulfill its promise to contain the flooding, Florimonte contacted her attorney, who contacted the Borough in writing to ask for resolution to the flooding problem. The Borough responded in writing that it was a private property owner's concern, and not the Borough's problem at all.

2. On March 4, 2003, Complaint 2003-EQ-60011, on behalf of Florimonte was filed by her counsel in Civil Court of Lackawanna County for trespass and negligence, without demanding a jury trial or claiming a violation of the Constitution of the Commonwealth of Pennsylvania. ***(Pet. App. 88-97.)***

3. From 2002-2005, Florimonte cleared Lot # 17, to determine the extent of the flooding. The topsoil was gone, leaving only hard packed earth which she would later cover with sod.

4. Two years passed without lawsuit progress or any response to phone calls to her counsel so early in 2005, Florimonte asked to be relieved of representation by the attorney.

5. In May, 2005, Florimonte was injured when a dead tree, killed by illegal digging of the trench in 2001, dropped a limb, while she was mowing, struck her head and broke the ear protectors she was wearing. The Borough was immediately informed in writing. (Neck pain was

ongoing and a bone scan in 2007, revealed two compression fractures in her neck and a reduction in height of two inches).

6. In 2006, unable to sell her home because of the flooding, savings gone, Florimonte obtained a second mortgage of forty-nine thousand dollars ($49,000.00) to avoid filing for bankruptcy.

7. New counsel was hired in 2006, and the process moved forward to Deposition (which would be cancelled by Borough counsel after Florimonte's arrival for Deposition) and Injunction Hearings in 2009.

8. *Immediately following the second Injunction Hearing on May 1, 2009, the presiding judge and Borough counsels visited the Property,* for an in person viewing of the two 18" pipes causing flooding of the Property, *one at the edge of the Property and a second pipe intruding twenty-three feet into and onto the Property. Florimonte specifically pointed out the siding rotting off her home to the judge.*

9. Counsel for Florimonte failed to appear for the viewing. A second dismissal of counsel for Florimonte was approved by the judge, who then *strongly informed* Florimonte that she would need to hire new counsel.

10. In June, 2009, after interviewing possible law firms, Florimonte, without funds to retain new counsel, *became pro se*, relying solely on her real estate knowledge. She knew little about the machinery of the legal court system or the anger of the presiding judge that she was pro se, who frequently said, "I am not here to train you." To be clear, Florimonte

never asked for his help or training but did expect, at all times, fair and just Opinions.

11. Florimonte then filed:

a. Motion for Injunctive Relief - Denied. *(Pet. App. 68)*

b. Motion for a Jury Trial – Denied.

c. Motion for Summary Judgment – Denied. *(Pet. App. 73)*

d. Motion for Recusal – Denied. *(Pet. App. 72-73).*

12. Desperate to end the continuing flooding of her Property, in 2009, additional Complaints for damages were filed by Florimonte, while the pipes were still on the Property, relying on *Graybill v. Providence Township, 140 Pa. Commw. 505, 512 (Pa. Cmmw. Ct. 1991):*

> **[T]he term 'permanent,' as here used, 'has reference not alone to the character of the structure or thing which produces the alleged injury, but also to the character of the injury produced by it. In other words, the structure or thing producing the injury may be as permanent and enduring as the hand of man can make it; yet if the resulting injury be temporary or intermittent, depending on future conditions which may or may not arise, the damages are continuing, and successive actions will lie for successive injuries.**

13. The Trial occurred on August 10, 2011, at which time Florimonte requested compensation for the trespass by the Borough on her land for the past eleven years. (In 2009, Florimonte had filed separate Complaints, for new and ongoing damages, therefore, actual damages were not claimed at Trial in 2011).

14. The Borough Engineer testified at Trial, claiming a prescriptive

easement on the Property. However, upon questioning by Florimonte, the Engineer failed to provide any of the requirements of such an easement, to substantiate such a claim.

A valid prescriptive easement must be twenty-one years in duration, must be open, visible, notorious and uncontested. The invasion of the Property by the Borough met none of those requirements. The pipes were installed sometime after 1982 and were hidden. Florimonte complained in 2000, after discovering the first pipe.

After lunch break, the prescriptive easement claim was withdrawn.

15. During Trial in August, 2011, Florimonte learned that storm water being channeled to the Property was originating in the new development known as Huntington Woods, which was uphill from the Property

16. On December 28, 2011, the Judge, dismissed the Complaint of 2003, in its entirety, taking Florimonte's testimony out of context, *(Pet. App.114-115),* stating she had approved digging of the illegal trench, therefore there was no trespass.

17. Florimonte immediately appealed to the Commonwealth Court of Pennsylvania. An Opinion was issued on April 4, 2013, *(Pet. App. 64-86),* finding for Florimonte, although compensation for the years of trespass was requested at the beginning of Trial in 2011, no compensation for trespass was awarded to her for thirteen years (13) of occupation and flooding of the Property. The Court concluded, the Borough had not

admitted installing the pipes, so owed no duty to Florimonte. *(Pet App.80).*

18. During a July, 2013, Hearing to order removal of the pipes before the judge, who dismissed the 2003, Complaint, again, the Borough requested an easement, which Florimonte refused to provide. The pipes were ordered removed and cemented closed, at Florimonte's request, to end any further artificial flooding.

M. Financial Distress

In mid-2011, Florimonte's father began to financially support her and did so until late 2019, when he entered a nursing home. Florimonte has a ninety-nine (99) year valid certificate for teaching, so at the age of 74, she returned to teaching in September, 2019. Due to Covid, all schools closed in March, 2020. The extra unemployment income temporarily provided some financial relief.

More than sixty thousand dollars ($60,000.) in savings gone by 2004, and unable to sell her home, because of the flooding, which repeatedly overtakes the Property, for the last twenty-years, Florimonte has struggled to pay bills every month and ongoing repair costs to her home plus the added medical bills from the second accident, caused by the Borough actions, which have left her with no available disposable income.

N. Third Hidden Pipe

In 2018, Florimonte witnessed removal of a third large pipe behind the stone wall on 224 Third Street, which had continued artificially directing

storm water from Huntington Woods to a commercial sump pump in the front of 224 Third Street, which then swiftly crossed onto Third Street and onto the Property. The commercial sump pump was also removed in 2018.

O. Damage to the Property and home continued.

In 2021, the Sunroom ceiling collapsed from excessive moisture around and under the home. All Property trees began to die and are now dead.

P. Complaint 22-CV-3622

On September 7, 2022, Florimonte's last state Complaint, 22-CV-3622, was filed. *(Pet. App. 43-63).* The filing with only state claims, was restricted *to injuries from February 25, 2021 to September 7, 2022. (Pet. App.43-63).* Controlling state law for continuing trespass was relied on in *Lake v. The Hankin Group, 79 A. 3d 748, 758, Comm. Court (2013), which held:*

> b. *Continuing trespass.* The actor's failure to remove from land in the possession of another a structure, chattel, or other thing which he has tortiously erected or placed on the land constitutes a continuing trespass for the entire time during which the thing is wrongfully on the land and . . . confers on the possessor of the land an option to maintain a succession of actions based on the theory of continuing trespass or to treat the continuance of the thing on the land as an aggravation of the original trespass. . . .

The judge, after a January, 2023, Preliminary Objections Hearing, dismissed the Complaint, without allowing a jury to decide the merits of the case. *Further, in his Opinion, the judge would bar Florimonte from filing further pro se complaints. (Pet. App.28)*

Distressed by the dismissal, desperate to end the flooding, and unwilling to wait another two years for review by the Commonwealth Court of Pennsylvania, which had previously denied any compensation for thirteen (13) years of trespass and occupation on her Property, a Petition for Permission to Appeal or in the Alternative, Application for Extraordinary Relief was filed in the Supreme Court of Pennsylvania. ***(Pet. App. 2-27).*** **That request was denied in direct conflict with the decision in** ***Lake v. The Hankin Group, 79 A. 3d 748, Comm. Court (2013),*** ***pertaining to continuing trespass. (Pet. App. 1).***

Q. Denials by the Borough

The Borough claimed it did not know who installed the pipes then denied any responsibility for the flooding of lot # 17, instead blaming Florimonte for the problem. Robert Fisher testified that the Borough took the Property without notice and the Hedricks "were mad." ***(Pet. App. 158)***

To believe that anyone else could have installed connecting pipes to carry contractor effluent, storm and sump water from thousands of feet away, down hills, under Third Street to lot #17, is ludicrous.

R. Claims of a taking in 22-CV-3622

In Complaint 22-CV-3622, Florimonte claimed a taking pursuant to the Constitution of the Commonwealth of Pennsylvania, ***(Pet. App. 43-63).*** **The continuing purposeful, malicious flooding by the Borough meets the qualifications of a taking and spiteful ill will as this Court in** ***Village of***

Willowbrook v. Olech, 528 U.S. 562, 563-564 (2000), *PER CURIAM held:*

> **Respondent Grace Olech and her late husband Thaddeus asked petitioner Village of Willowbrook (Village) to connect their property to the municipal water supply. The Village at first conditioned the connection on the Olechs granting the Village a 33-foot easement. The Olechs objected, claiming that the Village only required a 15-foot easement from other property owners seeking access to the water supply. After a 3-month delay, the Village relented and agreed to provide water service with only a 15-foot easement. Olech sued the Village, claiming that the Village's demand of an additional 18-foot easement violated the Equal Protection Clause of the Fourteenth Amendment. Olech asserted that the 33-foot easement demand was "irrational and wholly arbitrary"; that the Village's demand was actually motivated by ill will resulting from the Olechs' previous filing of an unrelated, successful lawsuit against the Village; and that the Village acted either with the intent to deprive Olech of her rights or in reckless disregard of her rights. App. 10, 12.**
>
> **The District Court dismissed the lawsuit pursuant to Federal Rule of Civil Procedure 12(b)(6) for failure to state a cognizable claim under the Equal Protection Clause.**
>
> **Relying on Circuit precedent, the Court of Appeals for the Seventh Circuit reversed, holding that a plaintiff can allege an equal protection violation by asserting that state action was motivated solely by a "'spiteful effort to "get" him for reasons wholly unrelated to any legitimate state objective.'"**

The spiteful ill will of the Borough's continued flooding of the Property and its placement of catch basins *on streets that never flood*, shortly after the July, 2013, Hearing wherein Florimonte refused to grant an easement are visual confirmation of the Borough's intent to "get" Florimonte for denying an easement in 2013, which could have been freely had in 2001.

S. Legal decisions defining takings and financial costs:

This Court in *Phelps v. United States, 274 U.S. 341, 344 (1927), held:*

> **The government's obligation is to put the owners in as good a**

> **position pecuniarily as if the use of their property had not been taken. They are entitled to have the full equivalent of the value of such use at the time of the taking paid contemporaneously with the taking. As such payment has not been made, petitioner is entitled to the additional amount claimed. *Seaboard Air Line Ry. v. United States, States, supra,* 261 U. S. 304; *Brooks-Scanlon Corp. v. United 265 U.S. 106, 265 U. S. 123;* Liggett & Myers Tobacco Co. v. United States, ante, *p. 274 U. S. 215.***

Decisions by this Court which support Florimonte's reasons to grant an Extraordinary Writ of Mandamus and a request for remand; an amount for emotional distress; financial restitution for full compensation of the present value of her home as mold is present inside and outside the home; compensation for all trees, flora and fauna destroyed by the flooding; accumulated interest for the period of the taking; restitution of savings drained due to ongoing litigation; an *ongoing* Protective Order requiring catch basins to end flooding now and in the future so the Property can be sold; reversal of the lower court judge's ruling *barring* Florimonte from filing additional pro se lawsuits *(Pet. App. 28)*; preservation of the right to file a complaint pro se for the injury caused by September, 2023, flooding; a reopening of prior dismissed state complaints; as well as any other relief which this Honorable Court may deem right and just.

REASONS FOR GRANTING AN EXTRAORDINARY WRIT OF MANDAMUS

I. Petitioner is entitled to relief because Respondent violated multiple state laws while engaging in a dangerous taking.

As Petitioner's law professor, Donald L. Larrabee, Esquire, stated years

ago during his class in Legal Principles, *"Past behavior is the best predictor of future behavior."* That axiom was never truer than in this matter currently before the Court.

This sordid case is the result of avarice and eagerness to steal private property by a municipality, coupled with malicious, ongoing retaliation, against Florimonte, because she refused to give her land over to greed by government, she did not trust, without compensation.

To be clear, Florimonte *has never had control of her Property* since transfer *of title to her on May 5, 2000.* The right to sell her Property was destroyed by the Borough's physical occupation and flooding from 2000-2013, and further occupation later by an ever increasing uncontrolled river of flooding, forcing her into a continuing, *unending servitude*, draining her savings as well as the value of her Property to zero and, at all times, denying her right to enjoy or sell the Property. There are twenty-four (24) years of forced servitude, anguish and unending endangerment caused to Florimonte by the Borough's continuing taking and flooding of her home and Property, as valid reasons for granting this Petition for an Extraordinary Writ of Certiorari.

II. Relief Cannot Be Obtained Elsewhere.

Again and again Florimonte has tried to end the invasive flooding of her Property, only to be rebuffed by every lower court, state and federal.

As all lower courts, in conflict with each other, have failed to protect

Florimonte, or provide just compensation, because of a belief that damages must all be claimed in one suit, as well as an ongoing failure to grasp the dire consequences of a continuing, flooding trespass/taking, it has become clear that this Court is the only path open to Florimonte to end the relentless flooding and servitude forced on her by the Borough for the past twenty-four (24) years.

This case supports the Court's appellate jurisdiction, regarding takings, to prevent a similar case from occurring again. Exceptional circumstances which the lower courts, in disagreement with each other, failed to resolve, have aided the ongoing flooding that Petitioner experiences every year.

Further, the lower courts, in conflict with each other and settled law, have failed to protect or provide any aid or compensation to Florimonte, thus emboldening the Borough's continuing trespass, at will, by flooding.

III. The Claim Is Not Procedurally Barred.

Florimonte now turns to this Court, after two serious injuries, to beg for an end to the ongoing danger and suffering imposed on her daily, by the Borough's repeated, malicious flooding of her Property. The lower courts have refused to protect Florimonte, therefore, this Court is her last hope for refuge from further danger, injury and suffering.

After three unsuccessful attempts to prevail in federal court, especially after being threatened with Sanctions by a federal judge, the state court Complaint was filed in 2022, which brings this matter to this Court.

After Florimonte filed 22-CV-3622, the flooding of Third Street suddenly stopped. Immediately after the Complaint was dismissed in June, 2023, the flooding suddenly began again, eventually causing the injuries Florimonte suffered in the September, 2023, massive stormwater influx inundating her driveway, surrounding her home, and causing her fall.

IV. The Claims Are Meritorious

Flooding continues to increase in momentum and quantity, therefore, Florimonte contends that the Borough manages in some alternate way to artificially convey storm water to Third Street, just as the pipe hidden behind 224 Third Street, was unknown until 2018, when Florimonte witnessed its removal by heavy equipment, which had been working for days on the that property, as evidenced by photos. Unless catch basins are installed on Third Street, Florimonte will be unable to sell her Property.

The September, 2023, injury to Florimonte was the second time she has been injured by the Borough's actions. This does not include the falls on ice covering the land surrounding her home every year. The power of the storm water coursing through the Property in September, 2023, was so massive that large boulders lining a channel, created by the municipality, below Third Street, were pushed onto Fuller Road, closing that street for almost two months.

During that immense surge of storm water onto her Property, a life life altering injury was sustained which has left long-lasting internal

problems, a further shortening in stature and impending surgery.

As this is written, Florimonte's property is supersaturated, as it often is, because the Borough, continues to deny flooding protection to her land while purposely, offensively, flagrantly, maliciously providing that safety to other streets which *never* flood.

Florimonte's life has been shattered, as her home, newly renovated from 2000-2002, has continued to deteriorate and has sustained repeated major flooding events every year for the last twenty-four years.

Florimonte's refusal to provide an easement, after years of exploitation by the Borough, has resulted in the Borough's spiteful, ill will which is evidenced by the catch basins provided to streets which never flood, while the Borough continues to take and flood Petitioner's land without cease.

This twenty-four-year retaliatory taking will end only with this Court's intervention to protect Florimonte and provide just compensation, which the lower courts have denied, repeatedly over the years.

Judges both state and federal have failed to protect Florimonte or grasp the consequences of a continuing trespass by flooding which turns the Property into a veneer of ice during the winter and prevents mowing of grass until July/August every year. *See Peters Testimony(Pet. App. 129-148).*

Repeatedly warned, the Borough has ignored the danger which the floodings have posed to Petitioner, despite knowing of her injury in 2005.

The accusations that Florimonte misunderstands what she is reading or

that she has a ghost writer or that the Borough's claims of res judicata and collateral estoppel or failure to state a claim are valid, are all untrue.

Whether the issues of deference to government entities or a prejudice against pro se litigants in general, have affected the lower court failures to provide relief to Florimonte, it is imperative for this Court to protect her, her Property and her rights under the state and federal Constitutions.

Regarding pro se litigants, this Court has repeatedly held that pro se litigants are not required to meet the bar expected of licensed lawyers, as this Court in *Haines v. Kerner, 404 U.S. 519, 520-521 (1972), held:*

> **Whatever may be the limits on the scope of inquiry of courts into the internal administration of prisons, allegations such as those asserted by petitioner, however inartfully pleaded, are sufficient to call for the opportunity to offer supporting evidence. We cannot say with assurance that under the allegations of the *pro se* complaint, which we hold to less stringent standards than formal pleadings drafted by lawyers, it appears "beyond doubt that the plaintiff can prove no set of facts in support of his claim which would entitle him to relief." *Conley v. Gibson,* 355 U. S. 41, 355 U. S. 45-46 (1957).**

Dismissal of 22-CV-3622, was not a valid ruling. Res judicata and collateral estoppel are invalid regarding lawsuits for continuing trespass by flooding. Nor is it legal to bar Florimonte's pro se right to protect her Property. This Court has long held that pro se litigants are accorded leniency yet not so in Florimonte's case. The lower courts' purposes again and again have been to stop Florimonte as she continues to fight to protect her rights and her Property from the flooding which the Borough illegally, contemptuously directs to overwhelm her land. The purpose of all courts is

to mete out justice yet that purpose seems to be overridden/lost in lower federal court when the litigant is pro se. *See* Neitzke v. Williams, 490 U.S. 319, 327, 109 S. Ct. 1827, 104, L.Ed.2d 338(1989):

> **Moreover, it accords with the understanding articulated in other areas of law that not all unsuccessful claims are frivolous. It is also consonant with Congress' goal in enacting the *in forma pauperis* statute of assuring equality of consideration for all litigants. To conflate these standards would deny indigent plaintiffs the practical protections of Rule 12(b)(6) – notice of a pending motion to dismiss and an opportunity to amend the complaint before the motion is ruled on – which are not provided when complaints are dismissed *sua sponte* under § 1915(d).**

Regarding the previous physical occupation by the Borough of the Property for thirteen years, all of the following excerpts support claims of harm by Florimonte, especially, the powerful Opinion regarding the effects of a physical occupation of private property by another, and is best found in this Court's Opinion in *Loretto v. Teleprompter Manhattan CATV Corp. Et Al, 458 U.S. 419, 421* (1982), which *held:*

> **The government has engaged in a taking and must pay fair compensation if it authorizes a permanent physical occupation of private property, even when it is a small area and does not greatly affect the owner's economic interests.**

And Loretto at 458 U. S. 427,

> **When faced with a constitutional challenge to a permanent physical occupation of real property, this Court has invariably found a taking. [Footnote 5]As early as 1872, in *Pumpelly v. Green Bay Co.*, 13 Wall. 166, this Court held that the defendant's construction,**
>
> ***pursuant to state authority, of a dam which permanently flooded* plaintiff's property constituted a taking. A unanimous Court stated, without qualification, that "where real estate is actually invaded by**

superinduced additions of water, earth, sand, or other material, or by having any artificial structure placed on it, so as to effectually destroy or impair its usefulness, it is a taking, within the meaning of the Constitution."

And Loretto at 458 U. S. 433:

The Court emphasized that the servitude took the landowner's right to exclude, "one of the most essential sticks in the bundle of rights that are commonly characterize property." *Id.* at 444 U.S. 176

And even if the Government physically invades only an easement in property, *it must nonetheless pay compensation. See United States v. Causby. 328 U. S. 256, 328 U. S. 265 (1946); Portsmouth Co. v. United States,* 260 U. S. 327 (1922)." (Emphasis added).

And Loretto at 458 U. S. 435-436:

The historical rule that a permanent physical occupation of another's property is a taking has more than tradition to commend it. Such an appropriation is perhaps the most serious form of invasion of an owner's property interests. To borrow a metaphor, *cf. Andrus v. Allard,* 444 U.S. 51, 444 U.S. 65, 66 (1979), the government does not simply take a single "strand" from the "bundle" of property rights: it chops through the bundle, taking a slice of every strand.

Property rights in a physical thing have been described as the rights "to possess, use and dispose of it." *United States v. General Motors Corp.,* 323 U.S. 373, 323 U.S. 378 (1945). To the extent that the government permanently occupies physical property, it effectively destroys each of these rights. First, the owner has no right to possess the occupied space himself, and also has no power to exclude the occupier from possession and use of the space. The power to exclude has traditionally been considered one of the most treasured strands in an owner's bundle of property rights. [*See Kaiser Aetna*] 444 U.S. at 444 U.S. 179-180...*see also* Restatement of Property § 7 (1936). Second, the permanent physical occupation of property forever denies the owner any power to control the use of the property; he not only cannot exclude others, but can make no nonpossessory use of the property. Although deprivation of the right to use and obtain a profit from property is not, in every case, independently sufficient to establish a taking, *see Andrus v. Allard, supra,* 444 U.S. 66, it is clearly relevant. Finally, even though the owner may retain the bare legal right to dispose of the occupied

space by transfer or sale, the permanent occupation of that space by a stranger will ordinarily empty the right of any value, since the purchaser will also be unable to make any use of the property.

Moreover, an owner suffers a special kind of injury when a stranger directly invades and occupies the owner's property. As 458 U. S. *supra,* indicates, property law has long protected an owner's expectation that he will be relatively undisturbed at least in the possession of his property. To require, as well, that the owner permit another to exercise complete dominion literally adds insult to injury. *See* Michelman, Property, Utility, and Fairness: Comments on the Ethical Foundations of "Just Compensation" Law, 80 Harv.L.Rev. 1165, 1228, and n. 110 (1967). Furthermore, such an occupation is qualitatively more severe than a regulation of the use of property, even a regulation that imposes affirmative duties on the owner, since the owner may have no control over the timing, extent, or nature of the invasion. *See* n19, *infra.*

This Court in Armstrong v. United States, 364 U.S. 40,49 (1960) *held:*

The Fifth Amendment's guarantee that private property shall not be taken for a public use without just compensation was designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.

And in Andrus v. Allard, 444 U.S. 65, 66 (1979), this Court *held*:

Moreover, we also note that standing to sue for trespass is not limited to the owner of the property. Rather, Section 162 of the Restatement (Second) of Torts provides: A trespass on land subjects the trespasser to liability for physical harm to the possessor of the land at the time of the trespass, or to the land or to his things, or to members of his household or to their things, caused by any act done, activity carried on, or condition created by the trespasser, irrespective of whether his conduct is such as would subject him to liability were he not a trespasser.

In Nollan v. California Coastal Commission, 438 U.S. 825, 831, (1987),

this Court *held:*

"the right to exclude [others is] *one of the most essential sticks in the bundle of rights that are commonly characterized property." Loretto*

v. Teleprompter Manhattan CATV Corp., 458 U. S. 419, 458 U. S. 433, *(1982), quoting Kaiser Aetna v. United States, 444 U. S. 164, 444 U.S. 176* (1979). *In Loretto, we observed that, where governmental action results in "[a] permanent physical occupation" of the property, by the government itself or by others, see 458 U.S. at 458 U. S. 432-433, n. 9,* "our cases uniformly have found a taking to the extent of the occupation, without regard to whether the action achieves an important public benefit or has only minimal economic impact on the owner."

Further, in First English Evangelical Lutheran Church v. Los Angeles County, 482 U.S. 304, 318-319, (1987), this Court *held:*

> ("Nothing in the Just Compensation Clause suggests that *takings' must be permanent and irrevocable"). It is axiomatic that the Fifth Amendment's just compensation provision is "designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole." Armstrong v. United States, 364 U.S. at 364 U. S. 49.*

And at 482 U. S. 321, this Court *held:*

> But where the government's activities have already worked a taking of all use of property, no subsequent action by the government can relieve it of the duty to provide compensation for the period during which the taking was effective.

At 482 U. S. 321-322, this Court *held:*

> As Justice Holmes aptly noted more than 50 years ago, "a strong public desire to improve the public condition is not enough to warrant achieving the desire by a shorter cut than the constitutional way of paying for the change."

Regarding the Borough's proposal rejections, in City of Monterey v. Del Monte Dunes at Monterey LTD, 526 U.S. 687 (1999). this Court *held:*

> After petitioner city imposed more rigorous demands each of the five times it rejected applications to develop a parcel of land owned by respondent Del Monte Dunes and its predecessor in interest, Del Monte Dunes brought this suit under 42 U. S. C. § 1983. The District

Court submitted the case to the jury on Del Monte Dunes' theory that *the city effected a regulatory taking or otherwise injured the property by unlawful acts, without paying compensation or providing an adequate postdeprivation remedy for the loss. The court instructed the jury to find for Del Monte Dunes if it found either that Del Monte Dunes had been denied all economically viable use of its property or that the city's decision to reject the final development proposal did not substantially advance a legitimate public purpose.* The jury found for Del Monte Dunes. In affirming, the Ninth Circuit ruled, *inter alia,* that the District Court did not err in allowing Del Monte Dunes' takings claim to be tried to a jury, because Del Monte Dunes had a right to a jury trial under § 1983; that whether Del Monte Dunes had been denied all economically viable use of the property and whether the city's denial of the final proposal substantially advanced legitimate public interests were, on the facts of this case, questions suitable for the jury; and that the jury reasonably could have decided each of these questions in Del Monte Dunes' favor. *(Emphasis added).*

Further, in Jacobs v. U. S. 290 U.S. 13, at 16, 17 (1933), in a judgment reversing the Circuit Court of Appeals this Court *held:*

The amount recoverable was just compensation, not inadequate compensation. The concept of just compensation is comprehensive, and includes all elements, "and no specific command to include interest is necessary when interest or its equivalent is a part of such compensation." The owner is not limited to the value of the property at the time of the taking; "he is entitled to such addition as will produce the full equivalent of that value paid contemporaneously with the taking." Interest at a proper rate "is a good measure by which to ascertain the amount so to be added." Seaboard Air Line R. Co. v. United States, 261 U. S. 299, 261 U. S. 306. *(Emphasis added.)*
On appeal by the government, the Circuit Court of Appeals held that interest was not recoverable. 63 F.2d 326. This Court granted certiorari. 289 U.S. 719.
The only question before us is as to the item of interest. The government contemplated the flowage of the lands, that damage would result therefrom, and that compensation would be payable. *A servitude was created by reason of intermittent overflows which impaired the use of the lands for agricultural purposes. (Emphasis added.) The principle was restated in Phelps v. United States,* 274 U. S. 341 *There, the suit was brought in the Court of Claims, and that court*

> **judgment for the value of the property as it was found to be at the time of the requisition. Plaintiffs insisted that they were entitled to an additional amount to produce the equivalent of the value of the property "paid contemporaneously," and that, for this purpose, interest as a reasonable measure should be allowed. This Court sustained the claim.**

And finally, a recent controlling Opinion in *Arkansas Game & Fish Commission v. United States,* No. 11-597 (2012), *568 U.S. 23, 133 S. Ct.* 511, 515-516, 184 L. Ed.2d 417 -Supreme Court, 2012 :

> **Periodically from 1993 until 2000, the U. S. Army Corps of Engineers (Corps) authorized flooding that extended into the peak growing season for timber on forest land owned and managed by petitioner, Arkansas Game and Fish Commission (Commission). Cumulative in effect, the repeated flooding damaged or destroyed more than 18 million board feet of timber and disrupted the ordinary use and enjoyment of the Commission's property. The Commission sought compensation from the United States pursuant to the Fifth Amendment's instruction: "[N]or shall private property be taken for public use, without just compensation." The question presented is whether a taking may occur, within the meaning of the Takings Clause, when government-induced flood invasions, al- though repetitive, are temporary.**
>
> **Ordinarily, this Court's decisions confirm, if government action would qualify as a taking when permanently continued, temporary actions of the same character may also qualify as a taking. In the instant case, the parties and the courts below divided on the appropriate classification of temporary flooding. Reversing the judgment of the Court of Federal Claims, which awarded compensation to the Commission, the Federal Circuit held, 2 to 1, that compensation may be sought only when flooding is "a permanent or inevitably recurring condition, rather than an inherently temporary situation." 637 F.3d 1366, 1378 (2011). We disagree and conclude that recurrent floodings, even if of finite duration, are not categorically exempt from Takings Clause liability.**

The judges of both state and federal Court in Lackawanna County, Pennsylvania have consistently allowed the Borough to run roughshod

over Florimonte's rights and refused to protect Florimonte's rights under the Statutory Laws and rights provided to everyone by the Constitution of the Commonwealth of Pennsylvania by dismissing her complaints before allowing them to advance to a jury trial.

Whether by prejudice against pro se litigants or by deference to government entities, the lower courts continue to insist that all claims should have been settled in the first Complaint filed in 2003, refusing to understand that in a continuing trespass, a plaintiff cannot make claims for damages that have not yet happened.

This is Florimonte's third petition to the U. S. Supreme Court, but first in forma pauperis, as the retaliatory, massive, deliberate, vindictive, malicious flooding by the Borough, of her entire Property represents an unending daily risk to her life. The Borough has stolen almost one third of Florimonte's life as she has been subjected to the continuing trespass by flooding of her entire property despite repeated warnings of the danger caused by flooding.

At all times the Borough knew or should have known of the danger posed to Florimonte's safety but did nothing to end that danger. Overwhelming flooding in September, 2023, caused a hematoma, a second serious injury, ongoing health problems, shortening her stature again. Therefore, it is imperative for this Court to intercede and end this tragedy.

The lower courts have failed to stop the flooding she endures with every

significant rainfall. The sheer corruptness of the Borough, *demanding an easement on private property,* after illegally destroying a wetland, and illegally taking private property by installing hidden pipes for public use on the Property, then claiming immunity or blaming Florimonte for the problem, expecting to not be held accountable, is beyond reason.

The Borough's merciless flooding by installation of hidden pipes, on the Property that artificially redirected ever-increasing storm, sump pump water and contractor effluent from a newly created uphill neighborhood, continuing for twenty-four years, endangering the safety, health and life of Florimonte, while the Borough ignored multiple Cease and Desists, and manipulated the courts, is criminal.

After removal of the huge pipes and because Florimonte refused to provide an easement in 2013, the Borough has continued to flood the Property, by denying the protection of catch basins to Third Street while providing streets that never flood with those very protections. The lower courts' refusals to inflict financial punishment have emboldened the Borough to continue the same illegal actions of the past.

Proposals to end flooding remain unfulfilled or rejected outright by the Borough – it wants the land for free and will continue to take it without just compensation. *See Dennis Peters' Testimony describing the flooding and his proposal to resolve the flooding.(Pet. App. 129-148)*

Respondent has consistently acted with depraved indifference and vile,

spiteful, ill will, during this matter, by brazenly defying all legal and/or constitutional requirements and restrictions. Those actions have continued during all legal proceedings up to this very day. The flooding trespass, of 219 Third Street, Dalton, PA, is an intentional punishment by Respondent for Petitioner's refusal to provide an easement in 2013, which Respondent could have freely had in 2001, before Petitioner's home was damaged; before she was injured in 2005; before heaving of the entire house ruined the fascia which allowed scurrilous animals to invade her home since 2005; before her land was contaminated by contractor effluent; before the siding began to rot off her newly renovated home; before new ceramic tile flooring and new hearth began to crack from heaving; before mold began to spread everywhere inside and outside the home; before the roof separated from heaving; before her entire property was covered by ice every winter and water in summer; before she was unable to sell her home due to the ever-increasing flooding; before water collecting under the house caused cracks in the garage and porch floor; before the entire ceiling in the sunroom collapsed, in 2020, from excessive moisture under and surrounding the home; before her barn, new patio and screened-in porch were damaged; before all the trees on Lots 16 and 17 died from excessive flooding; before more than one hundred (100) feet of her wood fencing collapsed from supersaturated soil; before she was forced to endure a servitude of twenty-four (24) years; before she was injured a

second time during the massive rain event in September, 2023; before the fascia separation from heaving allowed white footed deer mice to bring a tick into the home in *December, 2016*, which gave Florimonte Lyme Disease, (who gets Lyme Disease in December), which brought on Sjogren's; before she was forced to share her small Property with what can only be described as a completely corrupt, violator of laws known as the Borough of Dalton.

When this legal process began, Florimonte believed that the lower courts would protect her. Only this Court can end the torment of a twenty-four (24) year, malicious, unconstitutional taking of private property by the Borough, and release Florimonte from the servitude forced on her by the very government with a duty to protect her.

CONCLUSION

The Petition for an Extraordinary Writ of Mandamus should be granted.

Respectfully submitted,

Carolyn J. Florimonte

Date: May 3, 2024