No. _____

IN THE SUPREME COURT OF THE UNITED STATES

JUSTIN HOLDER

Petitioner

V.

JEFFREY YOUNG

Respondent

On Petition for a Writ of Certiorari to the Supreme Court of Maryland

PETITION FOR A WRIT OF CERTIORARI

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Petitioner

I. QUESTIONS PRESENTED

The Town of Keedysville, Maryland's (the "Town") Subdivision Ordinance defines a "subdivision," wherein that definition, in its pertinent part, excludes from its regulation:

> ...the transfer or sale of land between owners of adjoining properties which does not involve the creation of any new buildable lots under the terms of the Keedysville Zoning Ordinance shall not constitute a subdivision...

QUESTIONS

A. Does the State employee judge Andrew Wilkinson's orders refusing to join the State, and voiding the deeds of Petitioner that contested the State's colorable claim to the "abandoned railroad" that Petitioner asked the court to quiet title thereto, constitute a "taking" under the 5th amendment when the order exceeds the municipalities police power, prohibits the rightful owner of using and/or disposing of said land, exceeds the "*in rem*" jurisdiction of the trial court, and when the deeds were valid transfers of land that indisputable complied with the subdivision ordinance because the trial court found facts and applied the doctrine of merger?

B. If so, did the trial court error in denying Petitioner's jury trial on this substantively new claim for just compensation when the trial court found the fact that the States name on the plat at issue was a "scrivener's error, nothing more?"

II. PARTIES TO THE PROCEEDINGS

1. Petitioner, Justin Holder was a Defendant in the trial court, and an Appellant in the Appellate Court.

2. Respondent, Jeffrey Young was a Plaintiff in the trial court, and an Appellee in the Appellate Court.

3. Uncle Eddies brokedown palace LLC was a Defendant in the trial court, and an Appellant in the Appellate Court.

4. Deena Holder was a Defendant in the trial court.

5. Town of Keedysville, Maryland was an interested party in the trial court.

6. State of Maryland Department of Natural Resources was an interested party in the trial court.

7. Washington County Maryland Board of County Commissioners was an interested party in the trial court.

III. CORPORATE DISCLOSURE

Uncle Eddies brokedown palace LLC is a New Mexico Limited Liability Company in good standing that is registered to do business in the State of Maryland. Uncle Eddies brokedown palace LLC is not a publicly held corporation or other publicly held entity, nor is 10% or more of the stock of this party owned by a publicly held corporation or other publicly held entity There is no other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation. Koolbus LLC, a New Mexico Limited Liability Corporation in good standing holds 100% membership interest in Uncle Eddies brokedown palace LLC. Petitioner, Justin Holder holds Koolbus LLC in an oral trust for his two (2) minor children. (Uncle Eddies brokedown palace LLC was allegedly dissolved.)

IV. THE PROCEEDINGS BELOW

1. Trial in the Circuit Court of Maryland for Washington County, **C-21-CV-20-371** (*Young v Holder*).

2. Direct Appeal in the Appellate Court of Maryland, **Appeal No. 1145, September term 2022** (*Holder v Young*).

3. Petition for writ of Certiorari to the Supreme Court of Maryland, **Petition No. 116, September term 2023** (*Holder v Young).*

V. ISSUES PRESERVED

In the Appellate Court of Maryland this Petitioner preserved these related questions:

1. Did the trial court err in determining Appellant's quitclaim deeds constituted "subdivisions" under the Keedysville Subdivision Regulations?

2. If not, did it err in determining that the deeds were void *ab initio*?

3. Did the trial court err in declining to dismiss the case for failure to join all parties?

4. Did the trial court err, and thus deny Appellant due process and the right to a fair trial, by prohibiting Appellant from introducing evidence relevant to his Answer and defenses at trial?

5. Did the trial court err in determining Appellee's "Complaint and Petition deal with questions that are only within the purview of a court and are not within the purview of a jury?"

6. Did the trial court err in granting relief as to Parcel 1 and other land outside of Parcels 2 and 3, and thus deny Appellant due process of law, where such relief was not sought in the Complaint, and where such land was not *in rem*?

In the Supreme Court of Maryland this Petitioner preserved this related question:

7. Did the Appellate Court err in affirming the Circuit Court's voiding of three deeds where it violated the 2002 Subdivision ordinance, where the deeds did not subdivide any property?

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Holder v. Young, No. 1145-2022, 2 (Md. Ct. Spec. App. May. 26, 2023)

Cert. Denied **Petition No. 116, September term 2023** (*Holder v Young)*

VIII. PETITION FOR WRIT OF CERTIORARI

Petitioner, Justin Holder ("Mr. Holder") comes forth and petitions this honorable Court for Writ of Certiorari of the decision of Justice Battaglia of the Supreme Court of Maryland, specially assigned as judge to the Appellate Court of Maryland, in Appeal No. 1145, September term 2022.

IX. OPINIONS BELOW

"In his Complaint, [Appellee Jeffrey Young, ('Young')] sought to quiet title by deed and/or by adverse possession, [to] real property...in Keedysville, Maryland, known as Parcels 2 and 3, as shown on Plat 2499." (E1196) "In addition, Mr. Young sought to enjoin [Appellant Justin Holder, ('Mr. Holder,') and his wife, ('Mrs. Holder')] from entering Parcels 2 and 3." (*Id.*) "Young had purchased a quitclaim deed for Parcel 2 in 1993 from Jennifer Butts, [**subject to public ways of record.**]" (E1197). Mr. Holder purchased a quitclaim deed from Jennifer Butts in 2020 for her remaining lands, (E1199 & 1208-10) which included Parcel 3. Mr. Holder's corporation, Uncle Eddies Brokedown Palace LLC ("Uncle Eddies"), responded to Young's notice of complaint, (E1195) which **sought relief to Young's Parcel 2 & 3 ONLY.** (E1196)

Uncle Eddies, Mr. and Mrs. Holder, one and all, answered Young's complaint denying "the accuracy of Plat No. 2499," and they denied that Young's deeds provide him exclusive ownership of Parcel 2 and 3 because of "the priority of title by others, and/or their use as a public road." (E1125-30) Mr. Holder denied Young's claim that the last title owner of the area denoted as Parcel 3 on Plat No. 2499 is "unknown," or that Young had made "reasonable and good faith efforts to locate" the legal paper title owner of Parcel 3, because that information is readily found in the Land Records. (*Id.*)

The trial court found Young adversely possessed parcel 3, and the Appellate Court affirmed the trial court. (E1224) The Appellate court vacated the trial court's orders as to any land outside of Parcel 2 and 3, because that land was not "*in rem*." (Opinion Appeal No, 1145, Sept. term 2022 Md. App. p. 63) Mr. Holder sought to quiet title to all of the property he asserted a claim to by virtue of his quit claim deeds, but the trial court was "hesitant to attempt to piecemeal out which portions of the [Petitioner's] 2020 and 2021 deeds are valid or invalid." (E1213) Nevertheless, the trial court voided three (3) of the four (4) deeds Mr. Holder placed into evidence, (E579-80 & E1226) because the trial court found the transfer violated the Town of Keedysville, Maryland's "Subdivision Ordinance," and the Appellate Court affirmed. The trial court also found

that Mr. Holder's corporation, Uncle Eddies was to be "disregarded."[1] (E1222) The Appellate Court of Maryland described part of the property Mr. Holder claimed as an "abandoned railroad." (Opinion Appeal No, 1145, Sept. term 2022 Md. App. p. 15) The trial court and the Appellate court found that public roads were not at issue in the litigation below. (Opinion Appeal No, 1145, Sept. term 2022 Md. App. p. 44-46) Mr. Holder Petitioned for Certiorari, and was denied.

X. JURISDICTION

Mr. Holder' petition for hearing to the Maryland Supreme Court was denied on August 15, 2023. Mr. Holder invokes this Court's jurisdiction under 28 U.S.C. § 1257, having timely filed this petition for a writ of certiorari within ninety days of the Maryland Supreme Court's judgment, on a state court decision contrary to federal law.

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[1] *See Hildreth v. Tidewater Equipment Co.*, 378 Md. 724, 838 A.2d 1204, 1209-14 (2003) (quoting *Bart Arconti,* 275 Md. at 312, 340 A.2d at 235). *See also Arthur Andersen LLP v. Carlisle*, 556 U.S. 624, 129 S. Ct. 1896, 1902, 173 L. Ed. 2d 832 (2009).

XI. STATUTES AND CONSTITUTIONAL PROVISIONS

(a) Statutes

Town of Keedysville "Subdivision Ordinance" § 4.02 Definitions: "For the purpose of these regulations the following definitions shall apply:

> **Subdivision** - The term subdivision means the division of a parcel of land into two or more lots or parcels for the purpose of transfer or ownership or building development, except that for the purposes of these regulations, **the transfer or sale of land between owners of adjoining properties which does not involve the creation of any new buildable lots under the terms of the Keedysville Zoning Ordinance shall not constitute a subdivision.** The term includes re-subdivision and when appropriate to the context shall relate to the process of subdividing or to the land subdivided." (emphasis added)

(b) Constitutional Provisions

5th Amendment

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.

14th Amendment - 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.

XII. STATEMENT OF THE CASE

A. The lay of the land and limited 12.2 foot strip of property "in rem."

In 1832, Samuel Cost, ("Cost") purchased a large parcel of property in Keedysville, Maryland that was surrounded on the north and west by the Little Antietam Creek, and bordered by a "wagon road" on the eastern side, (the "NN520" land). (E1080-83)

In 1864, "Cost" owned land west of the "Cost/ Keedy line," by virtue of the "NN520" deed, and "Keedy" owned land to the east. (*Id.*) One of this nations oldest roads ran along a portion of the "Cost/ Keedy line." (*Id.*) In 1866, a (now abandoned,) railroad bisected the "Cost/Keedy line," and severed Cost's "Peninsula" north of the railroad, from his "Remaining Lands" to the south. (*Id.*)

In this litigation Young claimed two (2) strips of land along the "Cost/Keedy line" that Mr. Holder sought to continue using as a road. (E1016-20) Jennifer Butts was sole heir to Cost's "Remaining Lands." (E1745-48) Young purchased a quit claim to a strip of land he describes as parcel 2 in 1993 from Jennifer Butts. (E1197) Mr. Holder purchased a quit claim from Jennifer Butts for all of her land remaining from the NN520 lands. (E1745-50) Young

limited his claim to land he placed "*in rem*," to Parcel 3, a 12.2 foot wide strip of land that was originally included in the NN520 lands of Cost. (E1016-20)

The trial judge removed the issue of public roads, (E80-90) and injunction from those public roads, (*Id.*) from the litigation. The trial judge found that Young adversely possessed his Parcel 3 sometime after 1993. (E1206-7) The result of another ruling in this litigation is that Mr. Holder and Uncle Eddies are the same entity, (E1222) and therefore the properties claimed by them are adjacent tracts, titled to the same entity. (E1199) The trial judge terminated the express easement benefitting Cost's "Peninsula." (E1225)

B. The three (3) quit claim deeds granted at least some land.

"With respect to Mr. Nagel's opinion that 15 square feet north of Parcel 3 may have escaped the subdivision process, the court is hesitant to attempt to piecemeal out which portions of the 2020 and 2021 deeds are valid or invalid." (E1211-13) Moreover, Mr. Nagel identified a 25 foot wide Gap of land, (E1745-50) and Young expressly limited his claim to a 12.2 foot wide strip. (E1016-20) Additionally, title to the "abandoned railroad" was not at issue below. (E1210) Indeed, there was no dispute that Mr.

Holder's three (3) deeds would grant a claim to some land outside of Parcel 3. (E1211-13)

C. The Corporate entity was "disregarded," and the quit claim deeds laid claim to the "abandoned railroad" adjacent to the corporations property.

The trial court found that Mr. Holder used Uncle Eddie's as an alter-ego, (E1222) and thereby the corporation should be "disregarded." The Appellate court of Maryland described Uncle Eddies property as being separated from Mr. Holder's remaining lands described in his three (3) deeds by an "abandoned railroad." (Opinion Appeal No, 1145, Sept. term 2022 Md. App. p. 15)

The trial court found that at least one (1) of Mr. Holder's deeds purported to grant Mr. Holder fee simple title to the "abandoned railroad." (E1210) The trial court declined to adjudicate the title to the "abandoned railroad," (*Id.*) which was presumed to be an easement:

> "In railroad parlance, 'the term `right of way' has two meanings: in one sense it is `"the strip of land upon which the track is laid"'; in the other sense it is `"the legal right to use such strip,"' and in this sense it usually means the

right of way *easement.' Ma. & Pa. RR. Co. v. Mer.-Safe, Etc., Co.,* 224 Md. 34, 36-37 n. 1 [] (1960) [] *See also Joy v. City of St. Louis,* 138 U.S. 1, 44, [] (1891) ('[T]he term `"right of way"' ... sometimes is used to describe a right belonging to a party, a right of passage over any tract; and it is also used to describe that strip of land which railroad companies take upon which to construct their road-bed.'). *Cf.* Philip A. Danielson, *The Real Property Interest Created In a Railroad Upon Acquisition of Its 'Right of Way,'* 27 ROCKY MTN. L.REV. 73, 74 (1954) (noting the two meanings and stating that '[I]n law [right of way] is synonymous with `" easement"'—a legal concept')." *See also generally Chevy Chase Land Co. v. US,* 355 Md. 110 (1999).

This Court has ruled that railroad abandonment "is not a matter f or judicial redecision." *Chicago & North Western Transp. Co. v. Kalo Brick & Tile Co.*, 450 U.S. 311 (1981). *See also, Chevy Chase Land Co. v. US supra* ("This interpretation of state law is consistent with the ICC's 'exclusive and plenary' jurisdiction over railroads up

until the time when the ICC approves of abandonment"), *Gaskins v. Marshall Craft Associates, Inc.*, 110 Md. App. 705 (1996) ("'...the nature of the regulated subject matter permits no other conclusion, or that the Congress has unmistakably so ordained.'").

See Br. Justin Holder in Appeal No. 1145, Sept. term 2022 pp. 9-12.

D. The trial judges ruling in application of the Town of Keedysville, Maryland's Subdivision Ordinance.

The trial court found that "any attempted quitclaims or conveyances by the Stonecrest developer or Ms. Butts in 2020 and 2021 to Mr. Holder did not comply with the Keedysville Subdivision Ordinance and they are, as such, invalid

and void[2]" (E1213) Mr. Holder owns the Uncle Eddies property, which is adjacent to the property described in Mr. Holder's three (3) deeds.[3] The Town of Keedysville Subdivision Ordinance did not regulate transfers of property between adjacent owners that do not create new lots.[4]

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[2] As noted in *Stitzel v. St. of Md*, 195 Md. App. 443,454 (2010) cert. denied, 418 Md. 192 (2011), where an ordinance provides that a transaction is unenforceable if it violates the ordinance, then the transaction is void. Where an ordinance does not call for unenforceability, the court should balance the interests of the parties in maintaining the transaction versus the public policy interests in voiding the transaction. Here, the Keedysville Subdivision Ordinance clearly provides that any attempted transfer of an interest without proper subdivision is invalid. However, even if the court were to balance the interest of the parties, the court believes that the public policy interest of the Town of Keedysville in enforcing its Ordinance outweighs the interests of Mr. Holder in attempting to claim ownership of a Gap....

[3] The trial court "disregarded" the corporation, and merged the parties interest to divest on a single entity. The "abandoned railroad" is presumably an easement under Maryland law. Without hearing evidence and making a legal determination of the ownership of the "abandoned railroad," the trial court declined to legally determine that the three (3) deeds violated the Town of Keedysville Subdivision Ordinance.

[4] *See* section 4.02 "Definitions," in Town of Keedysville Subdivision Ordinance.

XIII. CONSTITUTIONAL REASONS FOR GRANTING CERTIORARI

The court below's holding acts to bypass Mr. Holder's, (or his privities/vendors) 5th and 14th amendments rights, and tends to deny him any further redress of a "taking."[5] This is so because the trial judge is a State official, and the trial judge's "decision" "takes" Mr. Holder's property by voiding his deeds by way of improper application of the Town of Keedysville Subdivision Ordinance. This could have the effect of making the property unalienable, where Mr. Holder, (or his privities/vendors) can not use and/or dispose of the property.

Voiding Mr. Holder's deeds unlawfully subjected Mr. Holder to the Town of Keedysville's police power, where the Town has granted, or will effectively grant the property to other private parties without providing just compensation to Mr. Holder, (or his privities/vendors).

Alternatively, the trial judge's decision has the tendency to add credibility to the State's colorable claim to the "abandoned railroad," a right which the State chose not to appear at trail and avail itself of. In either case, a "taking" of valuable property rights

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[5] Notwithstanding, (or giving rise to) Mr. Holder's right to file an original claim in Federal District court to redress the alleged "taking" by the Town, County and/or State.

occurred by way of interference, physical invasion, actual condemnation, or prolonged threat of condemnation looming over the property.

There is no dispute that Mr. Holder, (or his privities/vendors) were not provided just compensation, and/or denied due process of law to prevent the "taking" from occurring. *See Green v. Frazier*, 253 U.S. 233, 238 (1920) (noting that "[p]rior to the adoption of the Fourteenth Amendment," the power of eminent domain of state governments "was unrestrained by any federal authority"). *See also Davidson v. City of New Orleans*, 96 U.S. 97 (1878). (The Court attached most weight to the fact that both due process and just compensation were guaranteed in the Fifth Amendment while only due process was contained in the Fourteenth, and refused to equate the missing term with the present one.) In *Chicago, B. & Q. R.R. Co. v. City of Chicago*, the Court ruled that, although a state "legislature may prescribe a form of procedure to be observed in the taking of private property for public use . . . it is not due process of law if provision be not made for compensation. . . . The mere form of the proceeding instituted against the owner . . . cannot convert the process used into due process of law, if the necessary result be to deprive him of his property without compensation."[6]

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[6] *Chi., B. & Q. R.R. v. City of Chi.*, 166 U.S. 226, 233, 236–37 (1897). *See also Sweet v. Rechel*, 159 U.S. 380, 398 (1895).

"[W]hile property may be regulated to a certain extent, if regulation goes too far it will be recognized as a taking." *Pa. Coal Co.* v. *Mahon*, 260 U.S. 393, 415 (1922). This Court has acknowledged a variety of ways that an interference or physical invasion with private property does go "too far." It could unfairly affect the owner's economic interests, or it might unjustly frustrate the owner's expectations. *Penn Cent. Transp. Co.* v. *City of New York*, 438 U.S. 104, 124 (1978). Alternatively, it would certainly have an impermissible "character." *Id.* This "character" analysis is crucial to Petitioners' case at bar, and justly warrants this Court's particular attention.

In this instant case the trial court judge Andrew Wilkinson voided Mr. Holder's deeds under the guise of "public policy," but did not provide Mr. Holder with "just compensation." Moreover, the trial judge denied Mr. Holder's request to join the government to the lawsuit, and all of the property that Mr. Holder's deeds granted was not even "*in rem,*" there was no due process afforded to Mr. Holder, nor did he have notice he could be "taken." There can be no doubt the "character" of the trial judge's order simply "took" Mr. Holder's property as a matter of "public policy." Mr. Holder demanded a jury trial, where he should have received "just compensation."

There are key distinctions between claims that attack a regulation for its character, and claims that attack it for its financial impact on property holders. The latter type of claim should be limited in breadth, as "[g]overnment hardly could go on" if it need compensate owners each time a regulation has the side effect of reducing the market value of a piece of property. *Pa. Coal*, 260 U.S. at 413. These claims therein require some assessment of the owners' economic losses or reasonable expectations which may lack the distinction necessary to apply bright-line rules, except for some unusual or harsh circumstances. *See, e.g., Lucas* v. *S.C. Coastal Council*, 505 U.S. 1003, 1020 (1992). Given these considerations, a facial analysis could be tricky, which may be why the judge below declined Petitioners' challenge insofar as it was "hesitant to attempt to piecemeal out which portions of the [Petitioner's] 2020 and 2021 deeds are valid or invalid."[7] (E1213)

When the governments interference with property rights has gone "too far" because of its

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[7] *Jenkins v. City of College Park*, 379 Md. 142 (2003) defined a quitclaim deed as: "A deed that conveys a grantor's complete interest or claim in certain real property but that neither warrants nor professes that the title is valid... insomuch: A quitclaim deed purports to convey only the grantor's *present interest in the land,* if any, rather than the land itself." (Cleaned up).

"character," the analysis focuses on the interference itself, *eg.*, "when the interference with property can be characterized as a physical invasion by the government," the rule is that compensation must be paid. *Penn Cent.*, 438 U.S. at 124 (citing *United States* v. *Causby*, 328 U.S. 256 (1946)). *See also Loretto* v. *Teleprompter Manhattan CATV Corp.*, 458 U.S. 419, 432–433 (1982). The character of the regulation itself is placed at issue, not the extent of economic losses it brings to any owner, and "'the character of the government action' not only is an important factor in resolving whether the action works a taking *but also is determinative*." *Id.* at 426 (emphasis added). The Justice below improperly analyzed that "character," presumably because the court below thought the only basis for impugning a regulation's "character" is that it effects a physical invasion, see, *e. g., United States* v. *Causby,* 328 U. S. 256 (1946) (So, too, is the character of the governmental action. A "taking" may more readily be found when the interference with property can be characterized as a physical invasion by government.)

But this Court has never suggested that "physical invasions" are the *only* basis for attacking a regulation's "character." This Court has given two ways that an interference with property can bear an impermissible "character": (1) it can be insufficiently "historically rooted" in implied limitations on property ownership rooted in the common law, or (2)

it can be "qualitatively [] intrusive." *Loretto*, 458 U.S. at 441. Interferences characterized as "physical" invasions violate both of these criteria, *Id.*, but it can not follow that other interferences would not fail scrutiny for similarly deficient of historical equivalents or being of the quality and significance to interfere with ownership. Indeed, this Court consistently admonishes courts below to cease reading its Takings precedents in a narrow scope as to their facts. *See Cedar Point Nursery* v. *Hassid*, 141 S. Ct. 2063 (2021); *Horne* v. *Dep't of Agric.*, 576 U.S. 350 (2015); *Ark. Game & Fish Comm'n* v. *United States*, 568 U.S. 23 (2012). The same principle should apply to analyses of how a given regulation's "character" may interfere with or otherwise appropriate a property interest demanding compensation.

In this instant case, the lower courts application of the Town of Keedysville Subdivision Ordinance tends to take the right of the undisputed owner to use or otherwise dispose of its property interest by quit claim deed. This type of regulation exceeds the police power of the municipality because it creates an unalienable piece of existing property that the Town now has the right to use, or dispose of to another private party, without paying the rightful owner just compensation. This is the "character" of interference, that while not a full on physical invasion, creates an arbitrary and capricious quasi-

physical barrier to the lawful use of , or right to otherwise dispose of property by the lawful owner.

This Court must grant certiorari to clarify how to analyze these sorts of "character" attacks and interference under the guise of land use restrictions. These kinds of regulation can not pass scrutiny because they simply are not "historically rooted" implied limits on property ownership born in common law, and they are unduly "intrusive." *See Loretto*, 458 U.S. at 441; *Pa. Coal*, 260 U.S. at 413; *Pumpelly* v. *Green Bay & Miss. Canal Co.*, 80 U.S. (11 Wall.) 166, 177 (1871) ("[The Takings Clause] protect[s] and secur[es] to the rights of the individual as against the government * * * [by] placing the just principles of the common law on that subject beyond the power of ordinary legislation to change or control them."). *See also N.Y. State Rifle & Pistol Ass'n, Inc.* v. *Bruen*, 142 S. Ct. 2111, 2126 (2022) (explaining, in the Second Amendment context, that "the government must demonstrate that the regulation is consistent with this Nation's historical tradition of firearm regulation"). Presumably, other regulations would be upheld to the extent they do not intrude upon those historical rights of ownership, *eg.*, if the regulation only protects the neighbors of the owner from an alleged nuisance. *See Mugler* v. *Kansas*, 123 U.S. 623 (1887). In every case, Americans' rights to use, and/or dispose of their property must be protected in a meaningful way. *See Nollan* v. *Cal.*

Coastal Comm'n, 483 U.S. 825, 833 n.2 (1987) ("[T]he right to build on one's own property * * * cannot remotely be described as a 'governmental benefit.'").

Meaningful protection is an essential property right because property owners are especially vulnerable to intrusive, abusive, or extractive regulation. They cannot move their property to a different Town, thus they are at the whim of whoever runs Town Hall at the moment (which could, effectively, be a single person).[8] They can be easy targets for misguiding public burdens or funneling public benefits, which bypass the requirements to raise taxes. These unlawful policies provide loopholes for planners to pick and choose, in effect, not the character of the *land* but the character of the *people* allowed to live or work there. It is not news to this Court, this Court has recognized these vulnerabilities in the precise context of land use permit/conditions regulated by the Town's subdivision ordinance. *See Koontz* v. *St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 604–605 (2013) (justifying heightened scrutiny because "land use permit applicants are especially vulnerable to [governmental] coercion"). Similar considerations warrant judicial protection in the context of land use

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[8] *See* Nick Vadala, *Councilmanic prerogative in Philadel- phia: What you need to know*, Phila. Inquirer (Mar. 21, 2022), https://www.inquirer.com/news/councilmanic-prerogative-philadelphia-city-council-20220321.html.

regulations generally,[9] and especially when the competing colorable claim is asserted by the State.

The Town, or State for that matter, can not simply sign a plat and thereby effect the lawful transfer of property from one owner to another. The owners claim goes far beyond what a surveyor draws on a plat that the Town, or State "rubber stamps." Without a deed, or other instrument in which the rightful owner acknowledges its intent to transfer the property, the "rubber stamping" of a plat is a "taking" by the Town, or State, where the government is transferring that land to another private party. This court must protect the fundamental rights to just compensation, and due process of law, when a Town, or State disregards the meaningful protections provided to private property owners not to have their property "taken." If the Town, or State decides the claims of Mr. Holder, or his vendor, should be "taken" for public use, and/or

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[9] The fundamental protection in these types of claims is primarily identical to this Court's exactions cases, which draw directly from *Pennsylvania Coal*. As in *Pennsylvania Coal*, a common theme is that if government wishes to enjoy the benefits of private property, then it may do so—by paying for the property interest. *See Nollan*, 483 U.S. at 841 ("California is free to ad- vance its 'comprehensive program,' if it wishes, by using the power of eminent domain[.]"). *See also Dolan* v. *City of Tigard*, 512 U.S. 374, 396 (1994) ("A strong public desire to improve the public condition [will not] warrant achieving the desire by a shorter cut than the constitutional way of paying for the change." (quoting *Pa. Coal*, 260 U.S. at 416)).

then granted to other private parties, than Mr. Holder, (or his privities/vendors) must receive "just compensation" for the claim, or be afforded due process of law, prior to that property being "taken." This Court's reversal would protect Petitioner's rights.

XIV. PUBLIC POLICY REASONS FOR GRANTING CERTIORARI

A. The Court should clarify the extent that a Municipalities Subdivision Ordinance can regulate the transfer of existing claims to property, and vindicate the "taking" of Mr. Holder's land without just compensation.

The decision by the Appellate Court of Maryland is plainly incorrect, as it both contradicts the bright-line holding of *Pa. Coal Co* and the express purpose of the 5th and 14th amendments of the constitution.

The Justice below presumably knows that constitutional attacks on land use regulation fit in one of two buckets: (1) "regulatory takings" necessarily subject to an ad-hoc inquiry involving the extent of the claimant's economic losses and expectations and (2) "physical takings" subject to a *per se* rule. That assumption was mistaken.

As this Court has explained, at least two ways exist that a claimant may adjudicate a constitutional attack on an interference with property: by demonstrating the losses it causes the claimant, or by questioning its "character." Describing the interference as a "physical invasion" the absolute

way to invalidate it. However this Court has not suggested that that is the *only* way to challenge an interference's "character." Instead, as this Court has discussed, character-based attacks on property interference will succeed by alleging that it is (1) qualitatively intrusive or (2) not historically rooted in traditional limitations on property. If that is so, the government must pay for the property interest it "takes."

Towns across the country are acting ignoring this constitutional right and continue to restrict private property interests as if they have always belonged to the government. This Court should grant certiorari in this case to remind those Towns that Americans have a right to exercise property interests that belong to them, subject not to governmental mandate but only to traditionally implied limitations. Indeed, if government desires to enjoy a private property interest (or restrict owners from exercising a property interest), it must pay for it.

This issue is particularly important as it restricts Mr. Holder's, (or his privities/vendors) ability to access, sell, improve or otherwise "use or otherwise dispose of" the property he, (or his privities/vendors) lawfully owns. This Court has always been concerned with "chilling effects" on exercise of constitutional rights; the "chilling effects" of Mr. Holder's issue is upon the right to use or

otherwise dispose of property are as apparent as they are tragic. Inadequate judicial scrutiny over land use restrictions is encouraging governments across the country to burden property owners with exploitative, ahistorical, or intrusive regulation. The cost of this is particularly apparent in this instant Petition, because Mr. Holder can not access his land, nor purchase land adjacent to his property for that access. That direct and inevitable result from these kinds of regulations is chilling.

The essence of property ownership is dominion over its use—that is, who will be using it, and how. *See United States* v. *Gen. Motors Corp.*, 323 U.S. 373, 378 (1945) (Takings Clause considers "property" to include "the group of rights inhering in the citizen's relation to the physical thing, as the right to possess, use and dispose of it"). *See also Pa. Coal*, 260 U.S. at 413 ("'For practical purposes, the right to coal consists in the right to mine it." (citation omitted)). The framers viewed the protection of private property as crucial to safeguarding liberty; the very purpose of the Takings Clause is "for protection and security to the rights of the individual as against the government, * * * [by] placing the just principles of the common law on that subject beyond the power of ordinary legislation to change or control them." *Pumpelly*, 80 U.S. at 177. Yet many Americans are learning that, according to Town Hall, they do not *really* own their property.

Without access to his property for sewer, Mr. Holder can not use his property and build houses on it. This Court has stated that Americans possess a right to use their property, including to build housing upon it. *Nollan*, 483 U.S. at 833 n.2 ("[T]he right to build on one's own property * * * cannot remotely be described as a 'governmental benefit.'"). Moreover, this Court has repeatedly castigated the notion that protection over these kinds of rights is less deserved than other rights. See, *e.g.*, *Dolan*, 512 U.S. at 392 ("We see no reason why the Takings Clause of the Fifth Amendment, as much a part of the Bill of Rights as the First Amendment or Fourth Amendment, should be relegated to the status of a poor relation in these comparable circumstances."). In context of other rights, this Court has expressed a concern for "chilling effects" imposed on exercises of the right. *See, e.g.*, *Ams. for Prosperity Found.* v. *Bonta*, 141 S. Ct. 2373, 2389 (2021) ("The risk of a chilling effect on association is enough[.]"). This Court should grant certiorari to stop the ongoing "chilling effects" that land-use regulations place on the building and provision of housing. The stakes could not be higher. Notwithstanding all of this evidence, Towns show no sign of stopping.[10]

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[10] Petitioner *generally* adopted the public policy reasoning briefed by Institute for Justice as Amicus Curiae in support of Petition No. 22-1094 (*Petitioners* Community Housing Improvement Program, *et al.*), with substantial modification.

XV. CONCLUSION

It is in the public interest to establish a policy and precedent to prevent State courts from applying improper legal standards that bypass basic constitutional protections under the guise of public policy. This Court should grant Petitioner's Writ for Certiorari as it is the last resort to prevent the unlawful taking of Mr. Holder's land, without any due process afforded to him by a court of law. This court's opinion will also establish a pragmatic limit on municipal land use regulation that has gone too far. This country is currently suffering from a housing shortage, and a strong opinion from this court would serve to encourage Town's to ease restriction on land development.

Respectfully Submitted,

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