No. 24-150

IN THE

Supreme Court of the United States

JOHN R. STENSRUD, *et ux.*,

Petitioners,

v.

ROCHESTER GENESEE REGIONAL TRANSPORTATION AUTHORITY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SECOND CIRCUIT

REPLY BRIEF

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STATEMENT

The opposition of respondent, condemnor Rochester Genesee Regional Transportation Authority ("RGRTA"), wrongly claims that we have provided "no grounds … for an exception to *res judicata*," here. (Resp. Brf. p. 17, itals in orig.). To the contrary, our petition specifically identifies at least two principal bases for this Court to recognize such an exception:

1. Dr. and Mrs. Stensrud are those condemnees that this Court referenced in Knick v. Township of Scott, Pennsylvania, 588 U.S. 180 (2019), when it said "the guarantee of a federal forum rings hollow for takings plaintiffs, who are forced to litigate their claims in state court." Knick, 588 U.S. at 185.

2. There would be no *res judicata* or preclusion issue here, but for respondent's willful refusal to follow federal law required for just compensation in federal takings: the Uniform Appraisal Standards for Federal Land Acquisitions, commonly known – and referenced herein – as the "Yellow Book."

John and Maria seek only what Knick promised: relied from the state exhaustion requirement of the now-overruled Williamson County Regional Planning Commission v. Hamilton Bank, 473 U.S. 172 (1985), that so often leads to the preclusion trap that this Court decided Knick to avoid. Knick, 588 U.S. at 185, 197, 204-05, *citing* San Remo Hotel, L.P. v. City and County of San Francisco, 545 U.S. 323, 338, 347-48 (2005).

Yet, the Stensruds could not avoid the state exhaustion requirement or the preclusion trap, due simply to the fact that they were caught up in the accident of the timing of respondent's taking, some four years before Knick.

This Court can easily – and should – remedy this, by remanding the case to the District Court for further proceedings under the federal law that governs this matter.

REPLY

A. Respondent Does Not – and Cannot – Answer Why the Stensruds Should be Subjected to the Now-Overruled State Exhaustion Requirement and Preclusion Trap After Knick.

RGRTA's opposition simply fails to acknowledge what clearly happened here: the Stensruds, condemnees entitled to pursue their claim for just compensation under federal law, were precluded from doing so by a mere accident of timing: namely, the fact that RGRTA took the Stensruds' property some four years before Knick was decided. Consequently, the Stensruds were corralled into precisely the preclusion trap that this Court decided Knick to avoid.

None of the cases cited by RGRTA address this reality. Indeed, this case appears to be a case of first impression that calls out for resolution and a definitive statement from this Court.

Morabito v. New York, 803 F. App'x 463 (2020), differs from this case in crucial respects. First, the basis for dismissal in Morabito was issue preclusion, whereas it was claim preclusion, here. The lower

courts here conflated those two distinct concepts. Morabito, 803 F. App'x at 468.

But even assuming *arguendo* that the legal basis for the lower courts' rulings had been the same, the Morabito dismissal was for the threshold issue of lack of standing, which is entirely different from this case, where the state court was not permitted a complete record. Given the constricted record in state court, just compensation was not attainable there. The dual, state-federal process then mandated by Williamson's state litigation/exhaustion requirement, disrupted – then killed – the Stensruds' long quest for just compensation.

Further, as a threshold issue in state court, standing is entirely different from just compensation guaranteed by the Fifth and Fourteenth Amendments to the United States Constitution.

Moreover, the Morabitos chose – "whatever the reason" (Morabito, 803 F. App'x at 468) – to bring their claim in state court, whereas the Stensruds were *required* to do so, at the time, under Williamson. In their federal action, the Morabitos had nothing that was new, or which differed from their state case. In striking contrast, the Stensruds have their expert, Income Capitalization evidence, which, while precluded in state court, is fully admissible in federal court, and the only way to just compensation.

Similar to Morabito – and contrasting sharply with the case at bar – the plaintiff in Tejas Motel, L.L.C. v. City of Mesquite by & through Bd. of Adjustment, 63 F.4th 223 (5th Cir. Mar. 22, 2023), could offer nothing new in federal court than it did in its dismissed state case, that arose out of zoning enactments. In contrast here, the Stensruds have Income

Capitalization that was wrongly excluded based on a state regulation, yet is required in federal court.

Further, as affirmed in state court, the dismissal of Tejas's claim was partially procedural, based on Texas law not applicable here. Tejas, 63 F.4th at 328. Most significantly, the state court held that Tejas failed to satisfy federal standards, which was res judicata there – but clearly not the case, here. Tejas, 63 F.4th at 328.

In Ocean Palm Golf Club Partnership v. City of Flagler Beach, 861 Fed. Appx. 368 (11th Cir. 2021), an inverse condemnation case arising from a rezoning, the Florida state courts held, essentially, that the plaintiff golf club failed to prove that the challenged redevelopment left it with no reasonable economic return. As in Morabito and Tejas, the subsequent federal action included nothing new, and so it was clearly barred by res judicata. This is obviously different from the case at bar, where no one disputes that the Stensruds suffered economic loss (only the magnitude), and Income Capitalization necessary for just compensation precluded (purportedly) by a state regulation, is clearly admissible in federal court. In fact, it is required by federal law.

Again, if condemnees' right to a federal forum is sufficiently important to make it available as soon as their property is taken – and it clearly is, Knick, 588 U.S. at 185 – then that constitutional right is also sufficiently important that it should not be lost merely to an arbitrary accident of timing. This Court should recognize an exception to *res judicata* for those condemnees who – due only to the unavoidable arbitrariness of timing – have been denied their day in federal court, even after Knick.

B. Res Judicata Would Not Be An Issue If Respondent Had Complied With Its Duty to Follow Federal Law from the Inception.

No appraiser in this case followed federal law as required by the Uniform Relocation Assistance and Real Property Acquisition Policies for Federal and Federally Assisted Programs Act, 42 U.S.C. §4601, *et seq.*, and the Yellow Book. In the state trial, for example, no appraiser made the Certification required by the Yellow Book. Dkt. 81, Doc. 2 [Ex. A], §2.3.1.4.

Indeed, "just compensation is determined in accordance with federal rather than the state law." Dkt. 81, Doc. 2 [Ex. A], §4.1.3 n. 177. The Yellow Book further states that appraisers and attorneys must correctly apply federal law as it affects the appraisal process in the estimation of market value, recognizing that federal and state laws differ in important respects. Appraisals for federal acquisitions must follow the appropriate legal standards. Dkt. 81, Doc. 2 [Ex. A], §178.

"Federal law is 'wholly applicable' to condemnations by federal agencies, controlling procedural as well as substantive matters under Rule 71.1 of the Federal Rules of Civil Procedure." Dkt. 81, Doc. 2 [Ex. A], p. 91, n. 185-186.

This Court is in accord, as stated in United States v. Miller, 317 U.S. 369, 379-80 (1943): "We need not even determine what is the local law ... [on] the measure of compensation, grounded upon the Constitution of the United States." Dkt. 81, Doc. 2 [Ex. A], p. 90, n. 177.

Here, not only did respondent fail to follow the required federal law, it actively sought, from the inception, to thwart the Stensruds' rights to have their

right to just compensation adjudicated by federal law – *e.g.*, respondent moved, successfully, to preclude the only Income Capitalization in this case, which is required by federal law. Indeed, fact discovery in the district court confirmed that respondent was on notice of the need for a Yellow Book appraisal that complied with the required federal law.

Again, this appears to be the first post-Knick case to have reached this Court where required federal appraisal standards were not followed. Determination by this Court is crucial, among other reasons, to declare the proper remedy in such circumstances. For nearly a century, federal law determined that "for just compensation purposes, market value must be based on a property's highest and *most profitable* use—that is, an *economic* use. Dkt. 81, Doc. 2 [Ex. A], p. 105, §4.3.2.3 (italics in orig.).

"Federal courts have also rejected valuations that improperly fail to consider an economic use." Dkt. 81, Doc. 2 [Ex. A], §4.3.2.3. Because this was a federal taking, the ultimate issue of just compensation must be determined by federal law, using federally required valuation methodologies. Dkt. 81, Doc. 2 [Ex. A], §4.1.3.

"Just compensation is determined in accordance with federal law rather than state law. Both appraisers and attorneys must correctly apply federal law as it affects the appraisal process in the estimation of market value, recognizing that federal and state laws differ in important respects. Appraisals for federal acquisitions must follow the appropriate legal standards." Id.

"Opinions of market value for federal acquisition purposes must follow federal law to provide a fair

measure of just compensation. Otherwise, a finding on the value of a [property interest] that 'is derived from the application of an improper legal standard to the facts' must be remanded for new factual findings for application of the correct legal standard." Dkt. 81, Doc. 2 [Ex. A], §4.1.2 (internal punctuation and citations in footnote omitted).

Respondent also refused to value the Stensruds' property in its highest and best use, to use in its analysis the property's actual income and expenses for the past three (3) years, and to consider the amount that the Stensruds invested into the property – many hundreds of thousands of dollars – *e.g.*, as part of a cost approach to value, all of which are also required by federal law.

The legal impediment to just compensation under state law was a regulation that is simply intended to ensure full, pre-trial disclosure, yet was used here by respondent to prevent the application of the required federal law. Regrettably in the lower courts, RGRTA successfully avoided paying just compensation by not invoking the required Jurisdictional Exceptions, under the Uniform Standards for Professional Appraisal Practice (USPAP), to enable application of the required federal standards.

RGRTA never produced the required Yellow Book appraisal that values the subject income property in its highest and best economic use. The required appraisal process mandates that attorneys and appraisers follow federal standards, including collecting available operating income and expenses for at least three years. If RGRTA had used the data available, an analysis of the net operating income would have been required under federal law. However, because

the appraisers failed to use any Jurisdictional Exceptions to the state USPAP, this essential phase of the valuation method was omitted.

In summary, the only valuation that complied with federal law was excluded because the mandated federal appraisal standard, requiring Jurisdictional Exceptions and/or special instructions to ensure that appropriate valuation methods (Income Capitalization and Cost) were used, given the asset's income producing nature and the recency of massive capital investments, was precluded (purportedly) by a state regulation.

The lower courts ignored the required federal process to determine just compensation, and failed to invoke Jurisdictional Exceptions and/or specific instructions for appraisals requiring Yellow Book analysis. The state regulation would never have been an issue, had the mandated federal standards been followed. This Court should now remand, to allow this essential methodology to proceed, as required by federal law.

CONCLUSION

RGRTA was required – but failed – to follow federal law because this was effectively a federal taking, due to eighty percent (80%) federal funding, and the primacy of federal law regarding just compensation. Further, under the principles articulated by this Court most recently in Knick, the Stensruds' constitutional right to just compensation cannot be impaired by res judicata, as the Stensruds were forced into state court, due merely to an accident of timing between the date of taking and the issuance of Knick. Further, there would be no res judicata issue at all

here, had Jurisdictional Exceptions been invoked, as mandated by federal law, to enable the federally required valuation methods to proceed.

The Stensruds are those condemnees that this Court referenced when it said "the guarantee of a federal forum rings hollow for takings plaintiffs, who are forced to litigate their claims in state court." Knick, 588 U.S. at 185. The petition for a writ of certiorari should be granted.

Dated: September 20, 2024

Respectfully submitted,

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