No. _____

In the

Supreme Court of the United States

FORREST L. "LENNY" GEIST,
Petitioner, Pro Se

v.

KANSAS STATE UNIVERSITY,
KANSAS DEPARTMENT OF COMMERCE,
KANSAS STATE UNIVERSITY FOUNDATION, ET AL,
Respondents

On Petition for Writ of Certiorari to the United States Court Of Appeals for the Tenth Circuit

PETITION FOR WRIT OF CERTIORARI

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QUESTION PRESENTED

Intellectual Property (IP) is saleable property. Creators earn, retain, and depend on constitutional ownership rights like other assets such as real estate, bonds, cash, inventory, holdings, and similar chattels. The self-executing Takings Clause applies to IP, too.

This matter involves a state government and its arms—a public university and commerce dept.—illegally seizing and monetizing a private citizen's IP for comm'l purposes that's USPTO + SEC registered by way of inverse condemnation w/o compensation.

I authored business plans w/trade secrets that have property protection (*Ruckelshaus v. Monsanto*) and no expiration. My federal filings earn default copyright safety as "original literary works fixed to tangible media of expression" plus Safe Harbor. The Takings Clause protects all property including IP. Takings rulings confirm its self-activating nature. *First English, Knick,* and *DeVillier* are examples.

This Court affirmed in *First English, Knick* and *DeVillier* that the Fifth Amendment's Takings Clause was "self-executing" and "[s]tatutory recognition was not necessary" for claims for compensation because they "are grounded in the Constitution itself[.]" Two (2) federal circuits disagree causing legal conflicts. Our nation needs consistent IP protections from gov't overreach to foster discovery, innovation, and science. Two (2) other district courts disagree on IP safeguards and IP creators' Safe Harbor. The question here is:

Q: May a natural person, whose IP is taken by state gov't w/o payment, seek fair redress under the self-executing Takings Clause if that state's legislation affirms a justiciable cause of action while disallowing sovereign immunity as a possible litigation defense?

PARTIES TO THE PROCEEDINGS BELOW

This case arises out of a separate state-court action in McPherson County (KS) District Court that was removed to the Federal District Court in Wichita, Kansas. Plaintiff was: Forrest L. "Lenny" Geist, a private citizen, Kansas resident, and IP originator.

Plaintiff is sole petitioner w/no third parties involved while no applicable disclosures are necessary.

Plaintiff/Petitioner was Appellant in 10th Circuit.

Defendants in the district court were Kansas State University, the Kansas State University Foundation, the Kansas Department of Commerce, Network Kansas, the Western Kansas Rural Economic Development Alliance (WKREDA), the Northwest Kansas Economic Innovation Center (NWKEIC), and Grow Hays, Inc., et al.

The same parties were Appellees in the 10th Circuit.

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PETITION FOR A WRIT OF CERTIORARI

Petitioner seeks a writ of certiorari to review a US Court of Appeals judgment in the Tenth Circuit.

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The Tenth Circuit opinion is reported on the PACER website as *Geist v. Kansas State University Foundation, et al.*, No. 23-3266 (10th Cir. 2024). The federal district court opinion is on PACER as: 6:23-CV-01129-JWB-GEB. Both unpublished opinions are reproduced at Appendices ("App") as pages App. 1-16.

JURISDICTION

The Tenth Circuit Court of Appeals decision was entered on August 16, 2024. This petition was filed November 7, 2024 by USPS mail. The petition was refiled January 2, 2025 to meet native publication (print) guidelines also by USPS mail. Petitioner invokes this Court's jurisdiction under 28 U.S.C. 1254(1).

CONSTITUTIONAL/STATUTORY PROVISIONS

The Fifth Amendment to the US Constitution provides, in relevant part, "nor shall private property be taken for public use without just compensation."

STATEMENT

This case arises from an inverse condemnation compliant filed in a Kansas court alleging the Kansas Dept. of Commerce, Kansas State University, and its endowment (KSU Foundation) misappropriated my Intellectual Property to build, own and operate mixed-use, commercial property developments across all 105 Kansas counties using advanced, confidential, and proprietary angles I designed. I fixed my IP assets to tangible media of expression w/USPTO registration, a Securities & Exchange Commission filing (Reg. D),

and private correspondences (emails) w/Respondents. My works are "securities" and are protected by the *Defend Trade Secrets Act (DTSA)* as well as the *Electronic Communications Privacy Act.* Respondents agreed to secrecy and sent a Confidentiality Agreement dated Aug. 23, '18. They breached it and started for-profit investment groups (joint ventures) using my IP.

In said written secret agreement, Respondents conceded my concepts, plans, and sharp vision to blend multiple innovations, new technologies, and one-of-a-kind methodologies were "too complex, too complicated, and far too difficult to explain to other people." This confirms the true proprietary, unique nature of my business plan as well as inventiveness I had planned for enriching all Kansans. My plans to install and upgrade resources across several critical industries and vital local functions were agreed to be uncommon. My planned improvements are eligible for several sizeable federal incentives including multiple tax credits that can be "stacked" as capital used for investments and deployment of technology among other applications. This was all "foreign" to them.

I began forming my many trade secrets as early as Feb. 2, 2017. I received a USPTO trademark with trade dress content plus an exec summary via online registration. As a pro se registrant, I spoke with two USPTO staff attorneys for approvals and to establish legal rights. USPTO filings don't allow for "Fair Use". My IP has copyright shields as "original literary work fixed to tangible media of expression" at registration. My secrets don't require Copyright Office filings, also, to pursue infringement litigation after thievery. This was confirmed in *Valancourt Books, LLC* v. *Garland.* The DOJ did not appeal. Why would IP owners need to file with the Copyright Office ***after*** a confiscation?

Defendants do not deny accessing and using the IP in question for ***comm'l purposes***. Defendants claim they have "discretionary authority" to seize private property w/o compensation as part of their duties. They brazenly contacted and communicated w/my prof. network of people, potential customers and likely resources (also trade secrets) for investments. Defendants do not deny this. They are trying to elude legal obligations and remuneration to the good actor. Defendants think they're above the law. They and co-conspirators sacrifice civil and constitutional rights at the altar of greed. My abundant, detailed exhibits in my petition + appeal certify guilt and demand a trial.

The Kansas Legislature abolished sovereign immunity in 1979 as a litigation defense. The State government, arms, officials, and employees had no plausible defense in the McPherson County District Court. Defendants removed the case to a preferred forum and then claimed a federal court must dismiss it because of the Eleventh Amendment. They argued, in part, that a property owner could not bring an inverse-condemnation claims directly under the Fifth Amendment. They argued the Eleventh Amendment was superior to the Fourteenth Amendment in hopes of escaping culpability. I correctly argued Kansas's entry into statehood by the *Wyandotte Constitution* validates the Fourteenth Amendment as superior to the Eleventh Amendment as applied to matters of civil rights, commerce, private property protections (ownership). The Seventh Amendment guarantees a jury trial for such contested matters. It applies here.

The 14th Amendment "prohibits states from depriving any person of life, liberty, or property w/o due process of law." There are no gov't functions that allow property seizures via "discretionary authority."

The Takings Clause validates property owners are provided just compensation for a government's property seizures...spanning all types of property whether tangible or intangible (IP). This is the central issue in this matter—gov't seizure w/o compensation.

I wrote a comprehensive 157-page, customized business plan (PowerPoint slide deck) I presented and discussed in confidence and in person w/Respondents on two occasions in '18 prompting their confidentiality agreement while expressing disinterest toward any investments/partnerships. In their secrecy letter, the Respondents verified my incredibly unique IP was "well beyond their scopes" to the point they did not want to even be associated with my entrepreneurism thinking it was far-fetched, futuristic, and unproven. Thereafter, Defendants colluded and conspired with my private contacts (including each other) as well as others to "take over" my initiatives and cut me out of the financial gains and notoriety my inventive assets will surely realize. This caused tortious interference. My filings and evidence accurately exposed such facts.

What would happen if a bad foreign actor who's working for (or with) a public university or state gov't decided to hijack Intellectual Property for the benefit of his/her native country? This High Court must give direction uniformly to lower courts to recognize and protect private property rights of all types to ensure America's economic security and autonomy. We can't allow a state gov't &/or its representatives to go rogue and use any private property it wants w/o a checks and balances system like Takings. Americans need the Court to fortify takings laws and protect people's interests domestically and globally. This will support our nation within the *Berne Convention's* int'l tenets.

In a similar case involving property rights and a state gov't claiming sovereign immunity to avoid financial obligations from an inverse condemnation, *DeVillier v. Texas*, this Court ruled 9-0 for plaintiffs. Justice Thomas opined in *DeVillier*: "Because of the self-executing nature of the Fifth Amendment, several appellate courts have concluded that a property owner may sue a state directly for takings in violation of the federal constitution, without having to proceed under § 1983. *See Manning*, 144 P.3d at 93 ("Mannings' claim does not rely on congressional action. Rather, the just compensation claim stems directly from the text of the Constitution through the Fifth and Fourteenth Amendments."); *SDDS, Inc. v. State*, 650 N.W.2d 1, 9 (S.D. 2002) ("[T]he remedy [of just compensation found in the Fifth Amendment's Takings Clause] does not depend on statutory facilitation. Because it is a constitutional provision, it is a right of the strongest character."); *Boise Cascade Corp. v. Bd. of Forestry*, 991 P.2d 563, 567 (Or. Ct. App. 1999) ("In short, section 1983 does not provide for the remedy required by the constitution for a taking of property by the *state*."). This analysis is sound. Elementary logic supports it, too. "Holding otherwise would expose citizens to takings without adequate compensation, contrary to the protections our Constitution provides." *Manning*, 144 P.3d 92 As Petitioner, I concur that Takings applies in this case.

Echoing Justice Thomas's sage, rational, and very reasonable assessment, the *Geist v. Kansas State University* matter provides this Court the chance to consolidate divergent rulings and craft a consensus stance predicated on the US Constitution that entails civil and property rights. These certain inalienable rights include Intellectual Property creators receiving judicial and legislative support for marketable works.

Justice Thomas went on to write: "Admittedly, federal courts rarely hear federal takings claims against a state because a property owner cannot sue a state in federal court under the Eleventh Amendment. See Lapides v. Bd. of Regents, 535 U.S. 613, 616 (2002) ("The Eleventh Amendment grants a State immunity from suit in federal court by citizens of other States, and by its own citizens as well." (citation omitted)). Virtually, the only time a takings claim against a state ends up in federal court is when a state waives {11th} immunity by removing a lawsuit to federal court. See Id. (holding that "the State's act of removing a lawsuit from state court to federal court waives [Eleventh Amendment] immunity."). That is what occurred in *Geist v. Kansas State University*.

"Technically, a property owner could sue a state directly in federal court and the state could elect to waive its Eleventh Amendment immunity by failing to raise sovereign immunity as a defense."

"To be clear, an individual is always free to file suit against a governmental entity, other than a state or state actor, under § 1983 for the "deprivation" of a right "secured by the Constitution." 42 U.S.C. § 1983. This includes the Fifth Amendment's Takings Clause. Property owners find it advantageous to sue under § 1983 because a prevailing § 1983 plaintiff may, at the district court's discretion, obtain attorney's fees. See Id. § 1988(b). Simply because a § 1983 action cannot be brought against a state government or a state actor, however, does not mean that a property owner is left without a remedy when it comes to a Fifth Amendment takings claim. In such a situation, a property owner can sue the State directly under the Takings Clause. A takings plaintiff is not required to invoke § 1983." This assuredly holds true for *Geist v. Kansas State U., et al* as it did in *DeVillier v. Texas*.

Justice Thomas cont'd in *DeVillier v. Texas*: "the United States Supreme Court has held that the "constitutional privilege of a State to assert its sovereign immunity in its own courts does not confer upon the State an associated right to disregard the Constitution or valid federal law *Alden v. Maine*, 527 U.S. 706, 754-55 (1999). Drawing support from *Alden*, several state appellate courts have concluded that, even without an express waiver of sovereign immunity, the text of the Fifth Amendment mandates a remedy of just compensation. These courts have held that the purpose of the Fifth Amendment's Takings Clause would be subverted if private takings claims against a state were blocked by sovereign immunity. *See Manning*, 144 P.2d at 95 (The Fifth Amendment's "Takings Clause creates a cause of action against a state which is actionable in state court and to which the state may not assert immunity."); *SDDS*, 650 N.W.2d at 8-9 ("The Fifth Amendment and the takings clause in particular are integral parts of the Constitution, and they are made applicable to the states through the Fourteenth. It follows that South Dakota's sovereign immunity is not a bar to SDDS's Fifth Amendment takings claim ("[A]t least some constitutional claims [including those under the Fifth Amendment's Takings Clause] are actionable against a state, even without a waiver or congressional abrogation of sovereign immunity, due to the nature of the constitutional provision involved."). I agree with and adopt the reasoning provided by these courts. *See also* Eric Berger, *The Collision of the Takings and State Sovereign Immunity Doctrines*, 63 Wash. & Lee L. Rev. 493, 498 (2006) (arguing the Takings Clause "trump[s] state sovereign immunity by automatically abrogating—or stripping—immunity). Justice Thomas's opinion and that of a unanimous Court applies to *Geist*, as well.

In *Geist v. Kansas State University,* I plead to the Court on behalf of countless Americans to confirm Intellectual Prop. is exactly that—property—and it earns a legal bundle of rights just as tangible property does. This bundle prohibits inverse condemnation by state gov't, etc., and is subject to the Takings Clause.

Of note, this Court ruled (9-0) on a similar IP matter in *Two Pesos, Inc. v. Taco Cabana, Inc.,* 505 U.S. 763 (1992) deciding that trade dress as well as proprietary language explaining general concepts and imagery of comm'l endeavors are protectable assets. SCOTUS held: "Trade that is inherently distinctive is protectable under § 43(a) without a showing that it has acquired secondary meaning, since such trade dress itself is capable of identifying products or services from a specific source." The State of Kansas is using my trade dress and original sources for comm'l uses. The KSUF is a private entity and has no sovereign immunity—even if state legislation gave its gov't immunity. The private sector has no immunity. The Tenth Circuit incorrectly provided it in *Geist.*

REASONS FOR GRANTING THE PETITION

The US Constitution explicitly mentions only two remedies. One is habeas corpus. See Art. I, § 9, cl. 2. The other is the Fifth Amendment's guarantee of just compensation when private property is taken for public use. Most courts—including this Court—have ruled the guarantee of remedy is exactly that—assurance of an innate rectifier within our doctrines. These courts hold that the Fifth Amendment is self-executing. All property owners (w/o distinction or categorical delineation of property types) may then sue states for just compensation w/o first obtaining legislative permission. Kansas offers this path, and I took it. This Court should support this legal fabric.

There are 13 federal circuit courts of appeal in the United States. Twelve are regional while one is for jurisdiction over specific types of cases, such as patent law and claims against the U.S. government. Eleven of the Thirteen (11/13 = 85%) rule that the Takings Clause is self-directing. Only two courts, the Ninth Circuit and Fifth Circuit (*DeVillier v. Texas)* disagree. They hold the just-compensation right is protected only as a matter of legislative discretion and federal takings claims can be brought only pursuant to 42 U.S.C. 1983—which, as to Defendants such as here, means they cannot be brought at all. No less than eleven (11) circuits rule this is unconstitutional. This Court can direct all to be consistent as we need.

People who create Intellectual Property must be consistently afforded inherent litigative ability to pursue recourse against state gov'ts and their agencies when the latter choose to become bad actors and misappropriate trade secrets, patents, and other intangible assets under the dark cloak of sovereign immunity. Otherwise, any and all states and their representatives could and would thieve others' valuable creations that benefit everyone. Allowing IP theft would reduce if not eliminate discoveries and inventiveness to our nation's sizable detriment.

Like *DeVillier*, *Geist* v *Kansas State University* addresses a disjointed split of authority—essentially one between courts that follow this Court's takings jurisprudence and other courts that ignore it. *Geist* warrants this Court's intervention. Among other things, the division of authority matters because it invites unethical gamesmanship illustrated by this case. Had this case been litigated in a Kansas state court (where it was filed and belongs), a Kansas court would likely have recognized a federal takings claim without requiring any party(s) to invoke Section 1983.

By removing the claim to a given federal court, *K-State, et* al attempted to change the substantive law governing the matter hoping to subvert my fair and just claim. Therefore, we have a consequential split w/outcome-determinative effects on individual rights, which makes the question crucial to all who ideate to invent and produce commerce that benefit our nation.

This case is a notably straightforward vehicle for resolving an urgent question. The *Geist* decision is a bilateral appeal of the question presented, which was sought by Kansas itself in a case that the State removed to a federal court. The Tenth Circuit left this vital question unresolved—given dismissal confutes and usurps our Constitution as well as civil rights. It opens flood gates to more thievery and/or litigation.

As a critical question of law, this Court can—and surely should—purify the essential question. America needs this Court to make perfectly clear (or should we say "patently" clear) that property rights' inalienable nature must be protected for the greater good of all. This includes trade secrets as property.

In *DeVillier*, an undivided Court authored this: "There is no doubt in my mind that Plaintiffs have plausibly stated that the State's use of their property was more than incidental, meaning that the State has no immunity from liability. Not only have Plaintiffs alleged that the State knew or was substantially certain that the concrete barrier would cause flooding on the northside of IH-10, but they have also pointed to specific ways in which discovery might help them to prove those allegations at trial. *See Id.* at 21-23. Viewing the allegations in the light most favorable to Plaintiffs, as I must at this early stage, Plaintiffs have made a valid claim for inverse condemnation under Texas law that is plausible on its face. (cont'd) ⟶

Because I find that Plaintiffs have made a valid claim for inverse condemnation, Texas law does not provide the State with immunity from liability separate from its immunity to suit. *See El Dorado Land Co., L.P. v. City of McKinney*, 395 S.W.3d 798, 801 (Tex. 2013) ("A statutory waiver of immunity is unnecessary for a takings claim because the Texas Constitution waives gov't immunity for the taking, damaging or destruction of property for public use."

This is true for *Geist v Kansas State University.* My suit enables this Court to align four (4) federal district courts and our nation's understanding of IP laws consistent with, if not wholly within, tangible assets laws. Disjointed courts create countless future IP lawsuits. Some suits will come from foreign actors with bad intentions. We artists, authors, designers, and inventors in the worlds of art, discovery, science and technology need our original IP works protected—this includes safeguards from our own state agencies. In the matter of *Mills v. Arizona Board of Technical Registration, et al*, the Supreme Court of the State of Arizona ruled that an engineer, the plaintiff, had justiciable causes and a lower court erred dismissing them. The same is true for *Geist v. Kansas State U.*

Further, this Court can direct lower courts that private entities co-named as defendants in a civil matter with state governments and/or their arms unequivocally do not have immunity of any type... sovereign or otherwise. If not, state gov'ts and actors become worse actors in respect to misappropriating private property for economic gains that fall to those who enlist illegal pursuits. Sovereignty rests with the people per the Constitution we hold dear and died for. We must protect IP owners' civil and property rights. This matter can amalgamate several divided courts.

A. Courts disagree if the Takings Clause provides a mandatory remedy.

This Court has consistently, for decades, held the Fifth Amendment's just-compensation remedy is self-starting—that is, that the remedy stems directly from the Constitution and cannot be limited by the exercise of legislative discretion. Many lower courts have followed this Court's directives and held that they must entertain claims arising directly under the Takings Clause. But two federal courts of appeals—the Ninth and the Fifth Circuits—hold otherwise. The petition should be granted to resolve this split of authority. We need clear legal uniformity. This is especially true for Intellectual Property complaints. The "discovery and exploration" community cannot move forward capably or with pervasive distrust of state governments and their actors if any such public agency or official is allowed—worse yet—empowered to misappropriate private citizens' personal assets.

B. SCOTUS rulings confirm Takings just-compensation is "self- executing."

The simplest basis on which to conclude that a property owner may bring inverse-condemnation claims arising directly under the Takings Clause is that this Court has long recognized that "a landowner is entitled to bring an action in inverse condemnation as an apparent result of 'the self-executing character of the constitutional provision with respect to compensation[.]'" *First English Evangelical Lutheran Church* v. *County of Los Angeles*, 482 U.S. 304, 315 (1987). *First English* is particularly instructive here. In that case, a property owner filed suit alleging that a Los Angeles ordinance worked a taking, and the California courts held that no damages remedy was available for regulatory takings. *Id.* at 308–09.

SCOTUS reversed, holding a damages remedy for takings of private property is **mandatory**. The same is true for private property seizures of all types. If a state government or public university illegally acquires private, intellectual assets registered with the USPTO, SEC, or any applicable authority, there must be a remedy for damages, as there is here. Both the SCOTUS and Kansas Constitution confirm such.

The Court's analysis in *First English* began with text of the Takings Clause, which (unlike other provisions in the Bill of Rights) is not prohibitory—"it is designed not to limit the governmental interference with property rights *per se*, but rather to secure *compensation* in the event of otherwise proper interference amounting to a taking." *Id.* at 314–15. The consequence of this constitutional design is that "a property owner is entitled to bring an action in inverse condemnation as a result of 'the self-executing character of the constitutional provision with respect to compensation . . . ." *Id.* 315 (quoting *United States* v. *Clarke*, 445 U.S. 253, 257 (1980)). Put simply, these claims for just compensation "are grounded in the Constitution itself[.]" *Ibid.* And these claims could proceed of their own force: "'Statutory recognition was not necessary'" for a claim to proceed because suits for just compensation "*were [ ] founded upon the Constitution of the United States.*" *Ibid.* (quoting *Jacobs* v. *United States*, 290 U.S. 13, 16 (1933).

The United States had urged this Court to take a contrary view—to instead hold that "'the Constitution does not, of its own force, furnish a basis to award money damages against the government.'" *Id.* at 316 n.9 (quoting Brief for United States as Amicus Curiae 14). But the Court directly rejected that argument, pronouncing it "refute[d]" by a line of cases stretching back to 1893. *Ibid.*; see also *id.* at 316

(collecting cases). Contrary to the arguments of the United States, the only lesson that could be drawn from this Court's precedents was that "it is the Constitution that dictates the remedy for interference with property rights amounting to a taking." *Id.* at 316 n.9. This position holds true for this matter, *Geist v. Kansas State University,* given the Defendants/ Respondents are beholden to this same legal and logical reasoning and cases of more than 130 years.

This Court's wise decisions in *First English, Knick,* and *DeVillier* are fair and just. Over a century of unbroken precedent demonstrates this Court has "never tolerated" a rule under which "the government appropriates private property w/o just compensation so long as it avoids formal condemnation." *Cedar Point Nursery* v. *Hassid,* 141 S. Ct. 2063, 2076 (2021); accord *Knick* v. *Township of Scott,* 139 S. Ct. 2162, 2172 (2019) ("In the event of a taking, the compensation remedy is required by the Constitution.").This applies to private assets (IP) in *Geist v. K-State, et al,* too.

As the Court firmly emphasized in *Knick*, these modern cases rest on a solid foundation. In *Knick*, the Court pointed to *Jacobs* v. *United States*, 290 U.S. 13 (1933), which "made clear that, no matter what sort of procedures the government puts in place to remedy a taking, a property owner has a Fifth Amendment right to compensation as soon as the government takes his property without paying for it." 139 S. Ct. at 2170 (citing *Jacobs*, 290 U.S. at 16). And "the same reasoning applies to takings by the States." *Ibid.* That reasoning—that government takings give rise to a right to fair/just compensation—has been repeatedly acknowledged throughout this Court's history. Even in pre-incorporation cases like *Pumpelly* v. *Green Bay Company*, this Court favorably cited the idea that it

was a "settled principle of universal law that the right to compensation is an incident to the exercise of [the] power" to take private property. 80 U.S. 166, 178 (1871) (quoting *Sinnickson* v. *Johnson*, 17 N.J.L. 129, 145 (1839)). And in *Chicago, Burlington and Quincy Railroad* v. *Chicago*, this Court approvingly quoted Justice Jackson's opinion (riding circuit) in *Scott* v. *Toledo*, which held that the Fourteenth Amendment necessarily forbade states from "appropriate[ing] private property for the public benefit or to public uses without compensation to the owner[.]" 166 U.S. 226, 239 (1897) (quoting *Scott* v. *Toledo*, 36 F. 385, 395–96 (C.C.N.D. 1888)). In short, whether the government is building a street (as in *Scott*) or causing a flood (as in *DeVillier v. Texas*), property owners have long been unquestionably entitled to compensation for the taking of their property by gov't agencies and actors.

C. Lower courts yield to SCOTUS and feel they must hear takings claims directly.

Unsurprisingly, this Court's repeated admonitions that the just-compensation requirement is "self-executing" has led many lower courts to treat the requirement as self-executing. The highest courts within New Mexico, Nebraska, and South Dakota all squarely hold that the language of the Takings Clause means that the federal just-compensation remedy is mandatory. They hold inverse-condemnation claims, therefore, can be brought to state courts without statutory authorization. A host of other state courts of last resort, along with a plethora lower courts, have adopted this same principle in various contexts. I ask this Court to consider the implications as well as the ramifications of mixed applications of law and the uneven public messaging IP theft w/o fair payment causes to society and int'l actors whether good or bad.

Let's look at New Mexico first. See *Manning* v. *Mining & Minerals Div. of the Energy, Mins. and Nat. Res. Dept.*, 144 P.3d 87 (2006). In *Manning*, the plaintiffs sued directly under the federal Constitution because they lacked a cause of action—the defendant agency did not have the power of condemnation and so, it said, could not be sued in inverse condemnation. *Manning*, 144 P.3d at 91–92. The New Mexico Supreme Court disagreed, holding that this Court's precedents required it to recognize a takings claim brought directly under the "self-executing" Takings Clause. *Id.* at 95–98. To be sure, the court said, most of the rights secured under the Fourteenth Amendment require Congress to create a remedy to vindicate them. *Id.* at 97. But the just-compensation requirement of the Fifth Amendment is a remedy specifically required by the Constitution, which means that "[t]he Takings Clause creates an individual right to the remedy of just compensation."

The same is true in Nebraska, which holds that "[a] landowner is entitled to bring an action in inverse condemnation as a result of the self-executing character of the takings clauses of the U.S. and Nebraska Constitutions." *Henderson* v. *City of Columbus*, 827 N.W.2d 486, 493 (Neb. 2013). Indeed, Nebraska distinguishes inverse-condemnation claims (Takings) from civil rights claims in the same lawsuit.

South Dakota's highest court has held the just-compensation remedy is "self-executing and does not depend on statutory facilitation." *SDDS, Inc.* v. *State*, 650 N.W.2d (S.D. 2002). All South Dakota property owners have an absolute right to federal takings claims in state courts—even without authorization(s). This is true in Kansas where jury trials are a right.

Other high courts, at least through countless observations, say the same. In Kansas, specifically, where this property case was filed, the state's high court consistently acknowledges the federal and state takings clauses operate to "waive[ ] the government's immunity from lawsuits" and clearly "require the government to compensate property owners when it takes their property for public use," a waiver of the immunity "that otherwise often insulates the public treasury from claims for damages." In Kansas, the highest court said, in *Ventures in Property I v. City of Wichita*, 225 Kan. 698, Syl. ¶ 3, 594 P.2d 671 (1979), inverse condemnation was defined as follows:

> "Inverse condemnation is an action or eminent domain proceeding initiated by the property owner rather than the condemner. It is available when private property has been actually taken for public use without formal condemnation proceedings and where it appears there is no intention or willingness of the taker to bring the action." Defendants inversely condemned my property. Connecticut follows similar rules. A plaintiff's claim that is otherwise barred by sovereign immunity nonetheless fully retains the right to "seek just compensation for the state's taking of its property."

There is no language in Kansas law that opposes these positions and legal standards. There are no Kansas laws defining Intellectual Property as an asset category with reduced rights to ownership or legal protections against thievery. IP is a bankable, intangible, broad asset class that holds the same legal security as other assets. In commerce, private equity holdings are financial securities. Registration-exempt (SEC) offers are legal securities cited in my complaint. Respondents are raising money using my SEC filings.

New Jersey's high court held a state tort-claims act cannot bar inverse-condemnation claims under the Fifth Amendment due to a federal "constitutional prohibition against unconstitutional takings is self-executing." *Greenway Dev. Co.* v. *Paramus*, 750 A.2d 764, 770 (N.J. 2000). ("Accordingly, the Court holds that, because the Fifth Amendment is self-executing, [plaintiff's] claim under the Fifth Amendment Takings Clause is not dependent upon the § 1983 vessel."); *Speed* v. *Mills*, 919 F. Supp. 2d 122, 128 (D.D.C. 2013) ("[T]he Supreme Court held takings claims can be stated directly under the Fifth Amendment, without recourse to a statutory remedy, because of 'the self-executing character of the constitutional provision for just compensation . . . .'"); *Boise Cascade Corp.* v. *State ex rel. Or. State Bd. of Forestry*, 991 P.2d 563, 568 (Or. Ct. App. 1999).

These higher courts are not alone in their understanding of this Court's precedents. At least two federal circuits, in the context of explaining the interplay between the Takings Clause and the Eleventh Amendment, have explicitly stated that the Takings Clause allows for inverse-condemnation claims outside the context of Section 1983. In *DLX, Inc.* v. *Kentucky*, the Sixth Circuit held that the Eleventh Amendment protected Kentucky from being sued in federal court against its will but "that the Fifth Amendment Takings Clause is a self-executing remedy, notwithstanding sovereign immunity." 381 F.3d 511, 527 (6th Cir. 2004). As such, the Eleventh Amendment might function as a barrier to filing suit in federal court, but property owners nonetheless had a right to bring a claim against the State arising directly under the Fifth Amendment, and Kentucky courts "would have [ ] to hear that federal claim." *Ibid.*

The Fourth Circuit, too, holds that the Eleventh Amendment bars Takings Clause suits directly against states in federal court "when the State's courts remain open to adjudicate such claims." *Zito* v. *N.C. Coastal Res. Comm'n*, 8 F.4th 281, 286 (4th Cir. 2021) (quotation marks omitted). The Fourth, though, unlike the Sixth, has not squarely addressed whether the inverse-condemnation remedy is mandatory—that is, "whether a State can close its doors to a takings claim [or] whether the Eleventh Amendment would ban a takings claim in federal court if the State courts were to refuse to hear such a claim." Yet, it nonetheless recognizes those claims—wherever brought first—exist and ensure Due Process.

In sum, a Takings Clause claim brought under the Fifth Amendment rather than Section 1983 would certainly be viable in state courts across the country. It would almost certainly be viable if it were removed to the Fourth or Sixth Circuits. But, as discussed below, two federal jurisdictions disagree and hold that the claim brought here fails because Section 1983 is the sole vehicle by which a property owner may vindicate his or her rights under the Takings Clause.

D. Fifth and the Ninth Circuits disagree.

Two courts of appeals split from the consensus described above and hold that property owners may not vindicate their right to just compensation unless Congress has expressly authorized them to sue under Section 1983. Neither court squares with this Court's rulings in *First English* or *DeVillier* any of the Court's other Takings Clause jurisprudence. Fortifying this solid point, Kansas abolished sovereign immunity in 1979. Through legislation, Kansans spoke loudly in regard to the preservation of civil and property rights.

The first decision on this side of the split came from the Ninth Circuit. *See Azul-Pacifico, Inc.* v. *City of Los Angeles*, 973 F.2d 704, 705 (9th Cir. 1992) ("*Azul-Pacifico II*"). But *Azul-Pacifico II* was itself a departure from the Ninth Circuit's original rule, as articulated in its first opinion in the very same case.

When the Ninth Circuit first considered the *Azul-Pacifico* matter, it held (1) that the challenged rent-control ordinance worked a physical taking and (2) that the Takings Clause's just-compensation remedy was self-executing. *Azul-Pacifico, Inc.* v. *City of Los Angeles*, 948 F.2d 575 (1991) ("*Azul-Pacifico I*"), *vacated by Azul-Pacifico II*, 973 F.2d 704. Relying on this Court's Takings Clause cases, the *Azul-Pacifico I* panel held that "[t]he Constitution itself provides both the cause of action and the remedy" for an uncompensated taking of private property, and "[t]his is equally true of an action against a state subdivision." *Azul-Pacifico I*, 948 F.2d at 586. "If there was any doubt on this score it was removed by the Supreme Court in *First English*." *Ibid.*

The panel's first holding, about the rent-control ordinance, was not long for this world. Shortly thereafter, this Court decided *Yee* v. *Escondido*, in which it analyzed a similar rent-control ordinance as a regulatory, rather than physical, taking. 503 U.S. 519, 532 (1992). The Ninth Circuit panel promptly granted rehearing and changed course in light of *Yee*. *Azul-Pacifico II*, 973 F.2d at 705. But it did not simply follow *Yee* and analyze the ordinance through the rubric of regulatory takings. Instead, it now held (without citing this Court's Takings Clause cases) that "a litigant complaining of a violation of a constitutional right must utilize 42 U.S.C. § 1983[,]" even for a Takings Clause claim. *Ibid.* As Petitioner, I hold with or w/o § 1983, the 7th Amendment applies.

In the foresaid matter, this odd change went unexplained. Nothing in *Yee* abrogates *First English* or suggests that the Fifth Amendment is not self-executing. And nothing in the authorities cited by *Azul-Pacifico II* addresses *First English* either. To the contrary, at least one of *Azul- Pacifico II*'s citations points in just the opposite direction, noting that "the propriety of allowing actions directly against municipalities directly under the Constitution may depend on the specific right being protected" and that the Ninth Circuit had already "recognized the possibility of an action against a local government for the uncompensated taking of property[.]" *Molina* v. *Richardson*, 578 F.2d 846, 853 n.14 (9th Cir. 1978).

None of these flaws prevented the Fifth Circuit from expressly adopting *Azul-Pacifico II*'s rule in its published opinion below. App. 2a. However, it did so without any real explanation. The opinion provides a single sentence of analysis: "[W]e hold that the Fifth Amendment's Takings Clause as applied to the states through the Fourteenth Amendment does not provide a right of action for takings claims against a state." *Ibid.* It cites none of the cases holding to the contrary. It does not cite or try to harmonize its decision with this Court's Takings Clause cases. It does not explain why it adopts a position that *First English* declared "refuted." 482 U.S. at 316 n.9. Instead, it cites only two cases: *Azul-Pacifico II* and *Hernandez* v. *Mesa*, 140 S. Ct. 735 (2020), in which this Court declined to extend a *Bivens* remedy to the context of a cross-border shooting. Premise(s) of cases that find the just-compensation remedy to be self-executing is that the Takings Clause (by specifying a remedy) is materially different from other constitutional rights. Nothing in the Fifth Circuit's opinion or cited cases explains why.

Whatever the reasons for it, though, the split exists. Binding precedent in two courts of appeals holds that property owners are entitled to a federal just-compensation remedy only via Section 1983 or via the discretionary largesse of a state government. Other decisions (most importantly those of this Court) hold otherwise and say that the federal just-compensation remedy is mandatory. The petition for certiorari should be granted to resolve this question.

II. Question Presented Is Critically Important.

This question is critical. Intellectual Property (IP) rights are highly valuable assets. "The Founders recognized that the protection of private property is indispensable to the promotion of individual freedom." *Cedar Point Nursery* v. *Hassid*, 141 S. Ct. 2063, 2071 (2021). This Court cases repeatedly emphasize the point: "'[I]n a free government almost all other rights would become worthless if the government possessed an uncontrollable power over the private fortune of every citizen.'" *Chi., Burlington & Quincy R.R.* v. *City of Chicago*, 166 U.S. 226, 236 (1897) (quoting 2 Story Const. § 1790). A rule that allows the taking of private property without compensation "sanctions a tyranny which has no existence in the monarchies of Europe, nor in any other government which has a just claim to well-regulated liberty and the protection of personal rights." *United States* v. *Lee*, 106 U.S. 196, 221 (1882). The question presented, quite simply, is whether the Constitution gives states discretion to "sanction" that "tyranny." A state government and/or its arms simply cannot have ownership of private property by depriving people of civil and constitutional rights. IP folks need assurance of their works' legal sanctuary.

The question presented is important because this division of authority invites gamesmanship. This case is a perfect illustration. In Kansas, aggrieved private property owners may bring inverse-condemnation claims directly under the Fifth Amend to its state-level courts. {*Hiji* v. *City of Garnett*, 804 P.2d 950 (1991)}. That's what I did. Kansas legislation is quite clear. Gov't is accountable to the constituency.

Under this Court's decision in 1987 in *First English*, it's certainly *mandatory* for Kansas courts to recognize claims. Per *DeVillier*, if K-State defendants elect to remove it to a federal court as here, the State waives Eleventh Amendment. Otherwise, any given judicial forums to vindicate a Kansas private property owner's federal rights to a jury trial (7th Amendment) plus fair and reasonable compensation are merely at the sheer discretion of a state government's attorneys.

Furthermore, the DC and Tenth Circuits are diametrically polarized on the simple fact Copyright Office submissions hold any legal protections or value. In *Valancourt Books, LLC v. Merrick Garland*, the D.C. Circuit aptly concluded there is "no tetherable benefit" to mailing in or otherwise submitting original work that is merely stored as a public record for all to see. Legal questions regarding authenticity and origin come from digital "DNA" found in the works themselves that typically include forensic analysis down to the keystrokes and time stamps artists, designers, and writers use routinely.

As noted, the DOJ didn't appeal D.C. Circuit's ruling in *Valancourt*. It is clear and obvious the DOJ sees no legal or enforcement benefit to filing papers with the Copyright Office following an infringement. Bad actors merely use said filings to enable pilfering.

Federal rights clearly exist. Federal remedies are mandatory. Are they not? This Court is meant to be the final arbiter of what rights are enforceable and which remedies are mandatory. Allowing the current circuit splits to persist vests decisions to the hands of unseemly litigants rather than in courts where they belong. The petition for certiorari should be granted.

Defendants confirmed their comm'l intentions in a public press conference on January 16, 2023, at the Topeka Capitol Building with co-conspirators in tow. The Respondents prideful misappropriation and public statements of collaborative intent to use my IP for commercial income qualifies as a "Taking" under both the United States and Kansas Constitutions.

I filed an inverse-condemnation suit against the Kansas Dept. of Commerce (KDOC), Kansas State University (KSU), and the Kansas State University Foundation (KSUF), et al in the McPherson County (KS) District Court. Recognizing the State of Kansas does not allow sovereign immunity or "discretionary authority" as a defense for illegal private property seizures, the defendants' tactic was to remove the case to a federal court and then request dismissal. Quite recently (2024), in *DeVillier v. Texas*, Justice Sotomayor described the state's maneuver for doing this as '***sounding like a totally made up case***.' This is precisely what K-State did here—attempt to evade culpability for an illegal property taking w/o compensation. Noted prior, my trade secrets do not expire. They do not have to be registered with the Copyright Office or copies provided to the Library of Congress for legal protection. How would IP creators keep trade secrets reticent if req'd to register them?

Inexplicably, Wichita's lower court dismissed it. This denied my right to Due Process the Fourteenth Amendment guarantees—as do the KS Constitution and Kansas Bill of Rights. This is glaringly unjust.

The gov't respondents deliberately misuse my confidential and proprietary business plans, financing expertise, and my futuristic vision casting that wisely intertwine multi-faceted initiatives across diverse industries. Respondents stole my IP to establish local sustainability on a county-by-county basis across the Sunflower State's 105 counties. Respondents admit that "K-State 105" is a commercial enterprise. The State of Kansas, K-State, and its endowment group argued I had no claim under the Fifth Amendment. Their position is in opposition to constitutional law. Removing the case (unnecessarily and against my preference) to its chosen federal forum, Kansas moved to dismiss...arguing the property owner was not entitled to sue directly under the Fifth Amendment.

The US Constitution and a multitude of SCOTUS rulings affirm the Fourteenth Amendment is superior to the Eleventh Amendment in regard to matters of commerce, civil rights, and property claims. This jurisprudence applies to private property whether intangible or tangible. Just a few years ago in *Unicolors, Inc. v. H&M Hennes Mauritz, LP, Andy Warhol v. Goldsmith* and *Ruckelshaus v. Monsanto,* this Courts' rulings validate property rights for IP creators like me and include Safe Harbor protections for those who are represented pro se...such as myself.

Specifically, in 2022, the Supreme Court held in *Unicolors, Inc.* v. *H&M Hennes & Mauritz, L.P.* the Safe Harbor provision concerning inaccurate content in copyright registrations {17 U.S.C. § 411(b)} does not distinguish between mistakes of law and mistakes of fact. The inclusion of inaccurate information in a registration does not invalidate the registration when the inaccuracy is the result of a good faith misunderstanding of the law. The Court vacated the U.S. Court of Appeals for the Ninth Circuit's decision that the Safe Harbor afforded by 17 U.S.C. § 411(b)(1)(A) does not apply to a failure to understand the law. The 6-3 decision has significant implications for copyright owners and litigants alike. This decision applies in *Geist v. Kansas State University, et al.*

I, the Petitioner, already earned full copyright protections of my Intellectual Property (IP) when I met the requirement of "fixing original content to any tangible media of expression" when I write the fore noted 157-page business plan. Copyright protections were earned at those times (writing the plan and all related content within it as well as corresponding website KansasFreedomFarms.com and related.).

To fortify my legal bundles of rights and property ownership pedigree, I registered my IP with the USPTO office myself as well as the Securities & Exchange Commission (SEC) myself. In the event I had a "misunderstanding" of law for registrations, the Safe Harbor protects my IP from misappropriation—especially from a government entity that is using my private property for monetary gains in the private sector through enterprises that aimed at profitability.

The majority also relied on the legislative history of Section 411(b) and the policy justifications of the Safe Harbor. Congress enacted the provision to make the registration process easier — particularly for nonlawyers — and to eliminate technical loopholes that had previously prevented the enforcement of otherwise valid copyright registrations. Based on this history, Justice Breyer concluded "it would make no sense" for Section 411(b) to only excuse errors in copyright registrations stemming from good faith mistakes of fact but not good faith mistakes of law.

The majority further rejected H&M's argument that a contrary interpretation was required to avoid "making it too easy for copyright holders, by claiming lack of knowledge, to avoid the consequences of an inaccurate application." In that regard, the majority made clear copyright plaintiffs still must demonstrate that any inaccurate information resulted from a good faith mistake and that "willful blindness" can support a finding of actual knowledge depriving a party of the safe harbor. The majority rejected H&M's argument that "ignorance of the law is no excuse," noting such proposition applies to criminal cases in which courts have to determine if a defendant has the requisite mental state with respect to elements of a crime but does not apply to a civil liability safe harbor arising from "ignorance of collateral legal requirements."

My trade secrets (customer lists, financial data, sites, economic advantages, tech, etc.) earn copyrights when scribed. Filing my USPTO and SEC-registered IP ***again*** w/Copyright Office after infringement does not change facts, offer new info, or impact arguments.

Black's Law defines property as: *"The as ownership of a thing is the right of one or more persons to possess and use it to the exclusion of others."* In plain English, property is something you own. This is precisely what my copyrights, patents, trademarks, trade dress, and trade secrets embody. Intellectual Property is property. Ownership rights are legally congruent with real property rights along w/other asset classes. If a state gov't agency inversely condemns IP, it must pay to own assets it subjugates.

Numerous state court and federal court decisions in recent years confirm individual property rights and each individual's civil rights for protection against assets forfeitures whether in civil or criminal proceedings. No state or federal gov't or their arms have the legal authority to seize private property including those of the intellectual nature w/o due process + fair payment. This is inherently inarguable.

In the matter of *Geist v. K-State,* the Takings claims, said KSU, could be brought under 42 U.S.C. § 1983. Then, K-State declared it can't be sued under it. Here, it claims it can't be sued for violating the Fifth Amendment as the State of Texas did in *DeVillier.*

In *Knick,* for another example, this noble Court invoked *Jacobs* for the idea that "no matter what sort of procedures the government puts in place to remedy a taking, a property owner has a Fifth Amendment entitlement to compensation when the government takes his property without paying for it." 139 S. Ct. at 2170. That entitlement arises every time property is taken by any government: "Although *Jacobs v. United States* concerned a taking by Federal Government, the same reasoning applies to takings by the States." Id. at 2171. This applies to public universities, et al.

The consistently reaffirmed self-executing remedy provided by the Takings Clause undergirds the entire existing structure of federal takings law. Takings claims against the federal gov't proceed under the Tucker Act, but it is "only a jurisdictional statute; it does not create any substantive right enforceable against the United States for money damages." *United States v. Testan*, 424 U.S. 392, 398 (1976). Put differently, the Tucker Act "provides a waiver of sovereign immunity and a grant of federal-court jurisdiction, but it does not create any right of action." *Me. Cmty. Health Options v. United States*, 140 S. Ct. 1308, 1332 (2020). A "right of action" claim invoked under the Tucker Act is the self-executing Fifth Amendment recognized by *First English* and other decisions. *United States v. Causby*, 328 U.S. 256, 267 (1946) ("If there is a taking, the claim is 'founded upon the Constitution' and within the jurisdiction of Court of Claims to hear and determine.").

Here, I have all a given Tucker Act plaintiff has: absence of sovereign immunity, grant of federal-court jurisdiction under 28 U.S.C. § 1331, and exactly as much of a cause of action as any Takings plaintiff could invoking the Tucker Act. By the group's own admission, K-State, et al stole my highly valuable Intellectual Property and doesn't want to pay for it. If uncorrected, any/all states will thieve IP brazenly.

III. This Case Is A Great Vehicle.

Geist v. Kansas State University, et al is a great vehicle to resolve the critical question presented and the chaos-inducing lower federal court rulings that deliver antithetical opinions to what should be firmly consistent legal foundations and principles for all.

Respondents have conceded that the question presented is a controlling question of law here. The only question addressed is the right of an individual to receive fair and just compensation for Intellectual Property a governmental agency misappropriated. In this case, the State of Kansas, et al, have no sovereign immunity as mandated by its own Legislature. Why do federal districts differ on agencies/officials abusing the ability to remove cases from state courts in hopes of avoiding accountability to include compensation?

Further, this Court can effectively and wisely consolidate legal affairs that benefit our society as a whole by hearing and ruling on the practical matter that IP creators must have trade secrets safeguards. How can an IP inventor keep entrepreneurial secrets safe from bad actors (including state gov'ts) if they are forced to publish through the Copyright Office? This makes no sense. The D.C. Circuit got this one right. Why would anyone submit secretive work to a public forum only to be told such work is now compromised? The Tenth Circuit's interpretations of law are wrong. Mailing copies of original, private "literary works" to the Copyright Office enables bad actors to seize and claim it. How does one protect trade secrets? When a government agency or representative does this for moneymaking purposes—not merely to benefit the public—we have inverse condemnation. Inarguably, Intellectual Property (IP) is property—meaning this matter is not complicated. The question presented is narrow. The Court need not address if states can be sued in federal court under Takings. K-State, having removed it, is in federal court by choice, which KSU conceded. This waives immunity from suit...if it ever had any inkling of sovereign immunity to begin with. It doesn't. The Kansas Legislature determined it didn't in 1979 and still holds firmly to this position.

This Court need not decide if *K-State et al* must pay damages. At a motion-to-dismiss stage, the only question is if I can state a Takings claim directly. There's no curb to granting petition to determine if Intellectual Property owners must rely on legislative grace to enforce their inalienable rights under the Takings Clause. IP developers are property owners. Our works must be protected from public entities that misappropriate our new assets for monetary gains under the fraudulent guise of public good—especially given perpetrators are directly benefitting from the substantial windfalls. What is left to inhibit colleges/universities from stealing others' patents, trade secrets, and valuable copyrights? If K-State can steal any Kansas citizen's private property and be exempt from compensation and litigation, all hell will break loose. The petition should be granted and the case remanded. The State adopted all federal IP laws. I feel it belongs at the state level where filed.

Our country's legal history is glaringly clear. Since at least Magna Carta, property owners are entitled to prompt payments when their property is taken for public use. That entitlement was originally entrusted to the legislature, which had to pay when land was taken. But the responsibility for enforcing the right to compensation shifted over time to the judiciary—and this shift was exemplified by the Fifth Amendment. By the time the Fourteenth Amendment was ratified, the shift was complete: Jurisdictions nationwide recognized direct lawsuits for just compensation against governments that took property. Those lawsuits are like this one. A state gov't misappropriated private property w/o payment. Worse yet, the State began comm'l enterprises with it.

CONCLUSION

Respondents agree my Intellectual Property (IP) is "confidential and proprietary" and confirmed it by their confidentiality agreement. They admit using it (illegally) for comm'l purposes w/o just compensation to me. They don't have "discretionary authority" (as they say) to seize and use my private, protected property for joint ventures as part of their governmental duties. (?)

The US Constitution, Kansas Constitution, and Kansas Bill of Rights guarantee citizens that inverse condemnation results in a right to just payment as well as a jury trial. The lower courts incorrectly denied this.

The Respondents exacerbated their unethical and unlawful undertakings by causing tortious interference when they conspired and colluded between them and w/others who are my prospective customers (i.e., trade secrets) to solicit investment capital for a network of ag-tech, comm'l property developments I registered with two (2) federal agencies for the illegal purpose of enriching themselves at my expense using my IP, etc.

To avoid culpability and compensation, they claim to have sovereign immunity in a state that does not allow it as a legal defense for private property seizures.

The petition for certiorari should be granted.

Respectfully submitted,

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Notary Public - State of Kansas
PAMELA L. PICKING
My Appt. Exp. 11-28-2027

Pamela L. Picking