No. 24-926

IN THE

Supreme Court of the United States

JOHN R. STENSRUD, *et al.*,

Petitioners,

v.

ROCHESTER GENESEE REGIONAL TRANSPORTATION AUTHORITY,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE APPELLATE DIVISION, SUPREME COURT OF NEW YORK, FOURTH JUDICIAL DEPARTMENT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Did the New York State Supreme Court, Monroe County and the New York State, Appellate Division, Fourth Department, err in their interpretation and application of a New York eminent domain regulation?

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INTRODUCTION

In August 2015, the Respondent Rochester Genesee Regional Transportation Authority ("Respondent" or "RGRTA") used its eminent-domain authority to take a multifamily residential property (the "Property") from the Petitioners to make way for a planned expansion in Rochester, New York. After this taking, the Petitioners brought a claim in State Supreme Court ("State Court"). While the Petitioners' State Court Action was pending, this Court decided *Knick v. Township of Scott, Pennsylvania*, 588 U.S. 180, 182 (2019), which overruled its prior holding in *Williamson County Regional Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985), that "a property owner whose property has been taken by a local government has not suffered a violation of his Fifth Amendment rights—and thus cannot bring a federal takings claim in federal court—until a state court has denied his claim for just compensation under state law." *Knick*, 588 U.S. at 184. With *Williamson County* no longer a bar, the Petitioners brought this action in Federal Court, asserting claims nearly identical to the ones they had brought in State Court.

While the federal case was pending, the State Court held a bench trial and entered judgment awarding the Petitioners $509,000 for the taking of the Property. In light of the State Court's judgment, the District Court granted summary judgment to RGRTA on the ground that all of the Petitioners' claims in their Federal Action were barred by *res judicata*.

On May 10, 2024, the Second Circuit Court of Appeals affirmed the District Court's decision. *See Stensrud v.*

Rochester Genesee Reg'l Transportation Auth., 2024 U.S. App. LEXIS 11421 (2d Cir. May 10, 2024).

On October 15, 2024, this Court denied Petitioners' Petition for a Writ of *Certiorari* related to the Second Circuit's decision. *See* United States Supreme Court docket, No. 24-150.

On November 25, 2024, the New York State Court of Appeals denied Petitioners' motion for leave to appeal to the Court of Appeals. *See Matter of Rochester Genesee Reg'l Transportation Auth. v. Stensrud*, 42 N.Y.3d 909 (2024).

STATEMENT OF THE CASE

By all accounts, John and Maria Stensrud ("Petitioners") are seeking a second review from this Court of the dismissal of their complaint in Federal Court. To the extent that the Petitioners are also seeking review of any errors related to their State Court Action, it is quite clear that both actions sought the same essential relief, i.e., RGRTA took their property without paying just compensation.

The sole issue in both actions was the amount of just compensation due to Petitioners as a result of the taking of the Property by eminent domain. The measure of just compensation is well-settled: it is "to be measured by 'the market value of the property at the time of the taking.'" *Horne v. Dep't of Agric.*, 576 U.S. 350, 368-369 (2015) (quoting *United States v. 50 Acres of Land*, 469 U.S. 24, 29 (1984)).

This issue has been resolved, in its entirety, by the New York State Supreme Court, Monroe County (Doyle, JSC). Specifically, on September 26, 2022, the Supreme Court concluded that "the fair market value of the property at the time of the taking was $509,000" and thereafter awarded the same "as just compensation for the taking of the subject property." On May 3, 2024, the Supreme Court, Appellate Division, Fourth Department, affirmed the Monroe County Supreme Court judgment and held that the lower court's determination of the Property's value was based on a fair interpretation of the evidence. *See Matter of Rochester Genesee Regional Transp. Auth. v. Stensrud*, 227 A.D.3d 1416, 1417 (4th Dept. 2024).

After reviewing the full record of the State Court proceedings, the Federal District Court concluded, in pertinent part,

> There is no dispute that the claims asserted in the instant action arise out of the same transaction or series of transactions as the claim resolved by the state trial court's decision and judgment—namely, the taking of the Property by RGRTA in August of 2015. Nor is there any dispute that the claims could have been heard by the state trial court. Indeed, [Petitioners'] counsel conceded as much at oral argument. Further, [Petitioners] and RGRTA were parties to the state trial court proceeding. As such, [Petitioners'] claims appear to be barred by claim preclusion under New York law.

Stensrud v. Rochester Genesee Reg'l Transportation Auth., 669 F. Supp. 3d 186, 190 (W.D.N.Y. 2023).

On May 10, 2024, the Federal District Court's Decision and Order was affirmed by the Second Circuit Court of Appeals. In doing so, the Second Circuit held, in pertinent part,

> The [Petitioners'] second argument, that the Supreme Court's decision in *Knick* allows their federal-court action to proceed, is equally unavailing. In *Knick*, the Supreme Court overruled the state-court exhaustion requirement that *Williamson County* had effectively established, holding instead that a property owner asserting a Takings Clause claim need not seek just compensation in state court before bringing his claim in federal court. *Knick*, 588 U.S. at 185. But as we have previously explained, when a plaintiff has in fact brought his claims in state court and litigated those claims to a judgment, the district court is required by federal law to apply collateral estoppel—and *res judicata*—to issues decided in those proceedings, notwithstanding *Knick*. *Morabito v. New York*, 803 F. App'x 463, 468 (2d Cir. 2020); *see San Remo Hotel*, 545 U.S. at 336; 28 U.S.C. § 1738. We are not alone in reaching this conclusion. *See Tejas Motel, L.L.C. v. City of Mesquite ex rel. Bd. of Adjustment*, 63 F.4th 323, 334 (5th Cir. 2023) ([N]othing in *Knick* nullifies long-settled principles of res judicata.); *Ocean Palm Golf Club P'ship v. City of Flagler Beach*, 861 F. App'x 368, 371 (11th Cir. 2021) (The *Knick* Court did not overrule or otherwise modify its precedent in *San Remo*.).

> The [Petitioners'] attempts to distinguish these cases are unpersuasive.

Stensrud, 2024 U.S. App. LEXIS 11421, at *5-6.

REASONS FOR DENYING THE PETITION

The underlying State Court decisions do not conflict with any decision of this Court. And Petitioners have simply recycled the arguments raised in their prior *certiorari* application to this Court, which was denied. Accordingly, Petitioners have not carried their burden of demonstrating any "compelling reasons" for *certiorari* to be granted and the Petition should be denied. *See* Sup. Ct. R. 10.

THIS COURT HAS ALREADY ADDRESSED AND RESOLVED THE ISSUES RAISED BY THE PETITIONERS

In their prior Petition for a Writ of *Certiorari*, Petitioners asserted that Federal Law governs this case. In their present application, Petitioners again argue that Federal Law controls. Petitioners fail to acknowledge that this issue was already resolved by this Court. *See* United States Supreme Court docket, No. 24-150.

Federal courts have "consistently accorded preclusive effect to issues decided by state courts." *Allen v. McCurry*, 449 U.S. 90, 95-96 (1980); *see also Migra v. Warren City Sch. Dist. Bd. of Educ.*, 465 U.S. 75, 81 (1984). To qualify for full faith and credit under the Act, the "state proceedings need do no more than satisfy the minimum procedural requirements of the Fourteenth Amendment's

Due Process Clause." *Kremer v. Chem. Constr. Corp.*, 456 U.S. 461, 481 (1982). "Federal courts may not 'employ their own rules . . . in determining the effect of state judgments,' but must 'accept the rules chosen by the State from which the judgment is taken.'" *Matsushita Elec. Indus. Co. v. Epstein*, 516 U.S. 367, 373 (1996).

"Federal courts . . . are not free to disregard 28 U.S.C. § 1738 simply to guarantee that all takings plaintiffs can have their day in federal court." *San Remo Hotel, L.P. v. City & Cty. of San Francisco*, 545 U.S. 323, 338 (2005). As concluded by the Second Circuit, "once the state court's judgment issued, [Petitioners'] claims in this case were barred by *res judicata* as defined under New York law." *Stensrud*, 2024 U.S. App. LEXIS 11421, at *6.

THE STATE COURTS CORRECTLY INTERPRETED AND APPLIED THE APPLICABLE EMINENT DOMAIN REGULATION—22 NYCRR 202.61(E)

The Uniform Civil Rules of the Supreme Court—22 NYCRR 202.61(e), enacted in 1989, provides, in pertinent part, that, "[u]pon trial, all parties shall be limited in their affirmative proof of value to matters set forth in their respective appraisal reports."

There is no split of authority in New York on the interpretation of 22 NYCRR 202.61(e). The case relied on by the Petitioners—*Matter of OGC Ltd. Partnership v. Bd. of Assessment Review of Town of Owego* (79 A.D.3d 1224 [3d Dept. 2010])—provides no analysis, interpretation, guidance, or even reference to 22 NYCRR 202.61(e). The reason for that is simple: it is a tax assessment

case under Article 7 of the Real Property Tax Law. It does not and cannot speak to the statutory framework of a condemnation proceeding pursuant to the Eminent Domain Procedure Law.

All of the Appellate Divisions in New York have consistently applied 22 NYCRR 202.61(e).

- First Department: *Matter of Metropolitan Transp. Auth.*, 159 A.D.3d 518 (1st Dept. 2018).

- Second Department: *Matter of Village of Haverstraw [Ray Riv. Co., Inc.]*, 191 A.D.3d 994 (2d Dept. 2021).

- Third Department: *Matter of Town of Guilderland [Pietrosanto]*, 267 A.D.2d 837 (3d Dept. 1999); *Matter of Eagle Cr. Land Resources, LLC [Woodstone Lake Dev., LLC]*, 149 A.D.3d 1324 (3d Dept. 2017).

- Fourth Department: *Matter of Rochester Genesee Regional Transportation Authority v. Stensrud*, 173 A.D.3d 1699 (4th Dept. 2019).

All of the case law referenced above supports the basic premise of 22 NYCRR 202.61(e)—Valuation experts are used to establish the fair market value of appropriated property. A party intending to offer expert witness testimony regarding the value of appropriated land must include that value in an appraisal report. Here, Petitioners concede that their proposed expert—Mr. Eisenmann—was a valuation expert.

In the present application, Petitioners continue to ignore the significance of their failure to call Mr. Eisenmann, and the undisputed fact that Mr. Eisenmann was not precluded from testifying about income capitalization. The Appellate Division, Fourth Department, made this clear. *See Rochester Genesee Regional Transportation Authority*, 173 A.D.3d at 1701-1702. Petitioners simply elected not to call Mr. Eisenmann. This is fatal to the Petitioners' application. The Petitioners had their trial (and appeals/motions to the Appellate Division, New York Court of Appeals, and Second Circuit) and a full and fair opportunity to present their case. The Petitioners' strategic decision to not call Mr. Eisenmann cannot be transformed into an error worthy of this Court's review.

For their "Question Presented", Petitioners oddly note that "[t]his case is the consequence of the state courts' elevation of a state regulation over federal law." As set forth above, the referenced regulation—22 NYCRR 202.61(e)—simply eliminates surprise in eminent domain proceedings. The regulation provides that, "[u]pon trial, all parties shall be limited in their affirmative proof of value to matters set forth in their respective appraisal reports." This regulation has been in existence since 1989, and the Petitioners have failed to cite a single case calling its purpose or use into question. Contrary to Petitioners' contention, this regulation is not a substantive pronouncement on the measure of just compensation. Instead, this regulation merely outlines the procedures for exchanging appraisal reports in eminent domain proceedings, the timing of report submissions, the process for filing rebuttal reports, and the requirements for the content and form of appraisal reports. The only real error

outlined in Petitioners' application is their failure to follow settled New York eminent domain procedural law.

RGRTA agrees with Petitioners that this case, just like the many other eminent domain cases, is fundamentally about just compensation. The Petitioners continue to be under the mistaken impression, however, that just compensation equates to an amount of money that satisfies them. RGRTA has satisfied, in full, the underlying judgment of $509,000. The Petitioners believed that this amount was insufficient, but the Appellate Division, Fourth Department, disagreed and affirmed. In addition, the Petitioners also obtained an additional allowance award of $264,904.69 pursuant to their Eminent Domain Procedure Law § 701 application. Again, RGRTA satisfied that judgment, in full. The Petitioners brought the identical takings claim in Federal Court, which was dismissed on *res judicata* grounds. The Petitioners were not willing to accept the well settled principles of *res judicata* and perfected an appeal to the United States Court of Appeals for the Second Circuit. The Second Circuit affirmed this dismissal. *See Stensrud v. Rochester Genesee Reg'l Transportation Auth.*, 2024 U.S. App. LEXIS 11421 (2d Cir. May 10, 2024). And this Court denied Petitioners' Petition for a Writ of *Certiorari* related to the same.

This is the end of the road for the Petitioners. They have been made whole. Although not satisfied with the result, the trial courts and appellate courts (State and Federal) have entertained and resolved all of the legal issues presented since this dispute began approximately ten years ago.

RGRTA seeks only finality. Accordingly, RGRTA respectfully requests that this Court deny Petitioners' present application for *certiorari*.

CONCLUSION

Based on the foregoing, the Petition for a Writ of *Certiorari* should be denied.

Respectfully submitted,

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