No. 17-647

In The
Supreme Court of the United States

ROSE MARY KNICK,

Petitioner,

v.

TOWNSHIP OF SCOTT, et al.,

Respondents.

On Writ Of Certiorari To The United States Court Of Appeals For The Third Circuit

BRIEF OF THE AMERICAN PLANNING ASSOCIATION AS *AMICUS CURIAE* SUPPORTING NEITHER PARTY

JOHN M. BAKER
Counsel of Record
KATHERINE M. SWENSON
GREENE ESPEL PLLP
222 S. Ninth Street
Suite 2200
Minneapolis, MN 55402
(612) 373-0830
jbaker@greeneespel.com

Counsel for Amicus Curiae

May 31, 2018

COCKLE LEGAL BRIEFS (800) 225-6964
WWW.COCKLELEGALBRIEFS.COM

QUESTION PRESENTED

Should this Court continue to recognize two legal principles: a general need of takings plaintiffs to "complete" their takings claims by first seeking compensation under state law, and an exception to that requirement for facial takings claims?

TABLE OF CONTENTS

Page

QUESTION PRESENTED i

TABLE OF CONTENTS ii

TABLE OF AUTHORITIES iv

STATEMENT OF INTEREST OF *AMICUS* 1

SUMMARY OF ARGUMENT 2

LEGAL ARGUMENT 2

A. This Court's current jurisprudence recognizes a general need to "complete" a takings claim by first seeking just compensation under state law 2

B. The extraordinary circumstances needed to overrule existing precedents are not present here 4

1. For the most part, the *Williamson County* requirements have worked 8

2. Nevertheless, excessive applications of the *Williamson County* second prong have occurred, which this Court can and should prevent 10

a. Fifth Amendment takings jurisprudence must provide the floor when state courts decide state-law takings claims 10

b. Takings plaintiffs should not be forced to use state procedures that, in practice, do not provide constitutionally meaningful avenues for obtaining compensation 12

TABLE OF CONTENTS

Page

c. Plaintiffs and defendants should receive equivalent access to federal fora 14

d. *Williamson County*'s second prong should apply only to takings claims 15

CONCLUSION 17

TABLE OF AUTHORITIES

Page

CASES

Acierno v. Mitchell, 6 F.3d 970 (3d Cir. 1993).....16

Agostini v. Felton, 521 U.S. 203 (1997).....7

Arizona v. Rumsey, 467 U.S. 203 (1984).....5

Brown v. Legal Found. of Wash., 538 U.S. 216 (2003).....2

Burnet v. Coronado Oil & Gas Co., 285 U.S. 393 (1932).....5, 8

Cherokee Nation v. S. Kan. Ry. Co., 135 U.S. 641 (1890).....3, 5, 10, 11

City of Chi. v. Int'l Coll. of Surgeons, 522 U.S. 156 (1997).....14

Coles v. Granville, 448 F.3d 853 (6th Cir. 2006).....12

Country View Estates @ Ridge LLC v. Town of Brookhaven, 452 F. Supp. 2d 142 (E.D.N.Y. 2006).....16

Eggleston v. Pierce Cnty., 99 F. Supp. 2d 1280 (W.D. Wash. 2000).....15

Harris v. United States, 536 U.S. 545 (2002) 4

Hodel v. Va. Surface Min. & Reclamation Ass'n, 452 U.S. 264 (1981) 7

Hurley v. Kincaid, 285 U.S. 95 (1932) 6

Int'l Coll. of Surgeons v. City of Chi., Nos. 91 C 1587, 91 C 5564, 1992 WL 6729 (N.D. Ill. Jan. 10, 1992) 14, 15

TABLE OF AUTHORITIES – Continued

Page

John Corp. v. City of Houston, 214 F.3d 573 (5th Cir. 2000) 16

Joslin Mfg. Co. v. City of Providence, 262 U.S. 668 (1923).....6, 13

Koontz v. St. Johns River Water Mgmt. Dist., 570 U.S. 595 (2013) 11

Koscielski v. City of Minneapolis, 435 F.3d 898 (8th Cir. 2006).....12

Larson v. Domestic & Foreign Commerce Corp., 337 U.S. 682 (1949) 6

Lawrence v. Texas, 539 U.S. 558 (2003).....7

McKenzie v. City of White Hall, 112 F.3d 313 (8th Cir. 1997) 16

Murr v. Wisconsin, 137 S. Ct. 1933 (2017) 11

Patel v. City of Chi., 383 F.3d 569 (7th Cir. 2004) 16

Penn Ctr. Transp. Co. v. N.Y. City, 438 U.S. 104 (1978).....8, 9

Planned Parenthood of Se. Pa. v. Casey, 505 U.S. 833 (1992).....8, 17

River Park, Inc. v. City of Highland Park, 23 F.3d 164 (7th Cir. 1994).....16

Rosedale Missionary Baptist Church v. New Orleans City, 641 F.3d 86 (5th Cir. 2011) 16

Ruckelshaus v. Monsanto Co., 467 U.S. 986 (1984).....7

TABLE OF AUTHORITIES – Continued

Page

San Remo Hotel v. City & Cnty. of San Francisco, 545 U.S. 323 (2005) .....*passim*

Sinaloa Lake Owners Ass'n v. City of Simi Valley, 882 F.2d 1398 (9th Cir. 1989) 16

Southview Assocs., Ltd. v. Bongartz, 980 F.2d 84 (2d Cir. 1992) 16

Strickland v. Alderman, 74 F.3d 260 (11th Cir. 1996) 16

Sweet v. Rechel, 159 U.S. 380 (1895) 6

Swift & Co. v. Wickham, 382 U.S. 111 (1965).....8

Welch v. Texas Dept. of Highways & Pub. Transp., 483 U.S. 468 (1987).....5

Williamson Cnty. Reg'l Planning Comm'n v. Hamilton Bank, 473 U.S. 172 (1985) .....*passim*

Yee v. Escondido, 503 U.S. 519 (1992) 3, 7

CONSTITUTION

U.S. CONST. amend. V.....*passim*

U.S. CONST. amend. XIV 16

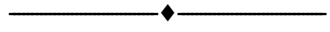
STATEMENT OF INTEREST OF *AMICUS*

The American Planning Association (APA) is a non-profit, public-interest research organization founded in 1978 to advance the art and science of land-use, economic, and social planning at the local, regional, state, and national level. APA, based in Chicago, Illinois and Washington, D.C., and its professional institute, the American Institute of Certified Planners, represent more than 38,000 practicing planners, elected officials and citizens in 47 regional chapters, working in the public and private sector to formulate and implement planning, land-use, and zoning regulations, including the regulation of signs. APA has long educated the nation's planning professionals on the planning and legal principles that underlie land-use regulation through publications and training programs, as well as by filing numerous *amicus curiae* briefs on important land-use law questions in state and federal courts across the country.[1]

[1] Pursuant to Rule 37.6, the APA affirms that no counsel for a party authored this brief in whole or in part, and that no such counsel or party, other than APA or its counsel, made a monetary contribution intended to fund the preparation or submission of this brief. Petitioner and Respondents have filed blanket consents to the filing of *amicus curiae* briefs.

SUMMARY OF ARGUMENT

This case presents the Court with an awkward situation in which both the decision below, and the petition for writ of certiorari, are at odds with some of this Court's precedents. In response, this Court should follow—not overrule—those precedents. Despite occasional excessive applications of those precedents by lower courts (which this Court should curb), those precedents generally work well and work fairly. This Court should continue to consider *facial* Fifth Amendment takings claims to be "complete" even if the plaintiff has not first tried and failed to obtain compensation under state law. But this Court should continue to subject *as-applied* Fifth Amendment takings claims to the 128-year-old general rule that such claims are not complete until the plaintiff tries, and fails, to obtain just compensation by pursuing adequate state-law procedures.



LEGAL ARGUMENT

A. This Court's current jurisprudence recognizes a general need to "complete" a takings claim by first seeking just compensation under state law.

Two lines of authority from this Court are important to acknowledge at the outset.

First, the Takings Clause of the United States Constitution does not proscribe "taking" of property, but only "taking without just compensation." *Brown v. Legal Found. of Wash.*, 538 U.S. 216, 235 (2003)

(quotation omitted); *Cherokee Nation v. S. Kan. Ry. Co.*, 135 U.S. 641, 658–59 (1890). Thus, where state law provides an adequate avenue for seeking compensation for an alleged taking of property, ordinarily an essential element of a takings claim is not present unless the plaintiff has pursued such avenues and failed to obtain just compensation. This requirement is now known as the "second prong" of the *Williamson County* rule. *See Williamson Cnty. Reg'l Planning Comm'n v. Hamilton Bank*, 473 U.S. 172, 194 (1985).

Second, the *Williamson County* second prong does not apply where—as here—a facial takings claim is at issue.[2] In *San Remo Hotel v. City and County of San Francisco*, 545 U.S. 323 (2005), this Court recognized that the second prong does not apply to facial takings challenges. As Justice Stevens' opinion for the Court explained:

> [P]etitioners have overstated the reach of *Williamson County* throughout this litigation. Petitioners were never required to ripen the heart of their complaint – the claim that the [ordinance] was facially invalid because it failed to substantially advance a legitimate state interest – in state court. See *Yee v. Escondido*, 503 U.S. 519, 534, 112 S. Ct. 1522, 118 L.Ed.2d 153 (1992). **Petitioners therefore could have raised most of their facial takings challenges, which by their**

[2] Petitioner stated in her Petition for Writ of Certiorari that her Second Amended Complaint included both facial and as-applied takings claims. (Pet. 9).

> **nature requested relief distinct from the provision of "just compensation," directly in federal court.**

San Remo, 545 U.S. at 345–46 (emphasis added); *see also id.* at 340 n.23 ("Petitioners' facial challenges to the [ordinance] were ripe, of course, under *Yee*. . . .").

In short, both those who advocate abolition of the *Williamson County* second prong, and those who advocate application of that test to all of Petitioner's takings claims (including her facial takings challenge), need this Court to depart from *stare decisis*. For this reason, the APA will focus its *amicus* brief on whether the heightened standards for overruling the Court's own precedents are satisfied under these circumstances, paying particular attention to the planning-related considerations involved. In so doing, the APA will identify certain divisions of authority in the lower federal courts in the application of these principles, and suggest how this Court might best resolve those conflicts.

B. The extraordinary circumstances needed to overrule existing precedents are not present here.

This Court has articulated the extraordinary circumstances that must be demonstrated before this Court will consider overruling a well-established precedent. As this Court noted in *Harris v. United States*, a "special justification" is required:

> *Stare decisis* is not an "inexorable command," *Burnet v. Coronado Oil & Gas Co.*, 285 U.S. 393, 405, 52 S.Ct. 443, 76 L.Ed. 815 (1932) (Brandeis, J., dissenting), but the doctrine is "of fundamental importance to the rule of law," *Welch v. Texas Dept. of Highways and Public Transp.*, 483 U.S. 468, 494, 107 S.Ct. 2941, 97 L.Ed.2d 389 (1987). Even in constitutional cases, in which *stare decisis* concerns are less pronounced, we will not overrule a precedent absent a "special justification." *Arizona v. Rumsey*, 467 U.S. 203, 212, 104 S.Ct. 2305, 81 L.Ed.2d 164 (1984).

536 U.S. 545, 556–57 (2002).

Williamson County was not an aberration. The principles embodied in *Williamson County*'s second prong were articulated more than a century ago and have been consistently followed by this Court since then. In explaining why landowners must seek "just compensation" and not simply wait for it to be tendered, the *Williamson County* decision quotes language first articulated in 1890 by the first Justice Harlan in *Cherokee Nation v. Southern Kansas Railway Co.*:

> It is further suggested that the act of congress violates the constitution in that it does not provide for compensation to be made to the plaintiff before the defendant entered upon these lands for the purpose of constructing its road over them. This objection to the act cannot be sustained. **The constitution declares that private property shall not be taken "for public use without just compensation." It**

> **does not provide or require that compensation shall be actually paid in advance of the occupancy of the land to be taken; but the owner is entitled to reasonable, certain, and adequate provision for obtaining compensation before his occupancy is disturbed.**

135 U.S. at 658–59 (emphasis added). This principle was soon applied to local takings. *See Sweet v. Rechel*, 159 U.S. 380, 400–07 (1895) (Harlan, J.) (finding no taking without just compensation by a city because the commonwealth had enacted a statute providing an avenue for certain and adequate compensation for the taking). This Court continued to articulate these principles in a variety of different kinds of takings cases. *See, e.g.*, *Joslin Mfg. Co. v. City of Providence*, 262 U.S. 668, 677 (1923) ("It has long been settled that the taking of property for public use by a state or one of its municipalities need not be accompanied or preceded by payment, but that the requirement of just compensation is satisfied when the public faith and credit are pledged to a reasonably prompt ascertainment and payment, and there is adequate provision for enforcing the pledge."); *Hurley v. Kincaid*, 285 U.S. 95, 103 (1932) (holding that the ability of landowner to seek compensation for taking under the Tucker Act, after taking has occurred, makes injunction against taking unavailable); *Larson v. Domestic & Foreign Commerce Corp.*, 337 U.S. 682, 697 n.18 (1949) ("Where the action against which specific relief is sought is a taking, or holding, of the plaintiffs' property, the availability of a suit for compensation against the sovereign will defeat

a contention that the action is unconstitutional as a violation of the Fifth Amendment."); *Hodel v. Va. Surface Min. & Reclamation Ass'n*, 452 U.S. 264, 297 n.40 (1981) ("[S]uch an alleged taking is not unconstitutional unless just compensation is unavailable."); *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1013 (1984).

Although the roots of the facial-claim exception to the second prong are not so deep, they extend back at least to this Court's decision in *Yee v. City of Escondido*, 503 U.S. at 534, in which it held that the plaintiff's facial takings claim was not subject to the *Williamson County* requirements.

The reasons for overruling one or both of these established lines of authority are insufficient to satisfy the "special justification" standard, particularly as it has been applied by this Court. There has not been "a significant change in, or subsequent development of, our constitutional law" that destroys the vitality of the principles upon which *Williamson County* and *San Remo* were decided. *See Agostini v. Felton*, 521 U.S. 203, 236 (1997). Similarly, the "precedents before and after [*Williamson County*'s or *San Remo*'s] issue" do not "contradict [their] central holding" in a way that creates uncertainty and erodes its foundations. *See Lawrence v. Texas*, 539 U.S. 558, 577 (2003); *cf. id.* at 587 (Scalia, J., dissenting) ("[W]e should be consistent rather than manipulative in invoking the doctrine [of *stare decisis*].").

Appeals to fairness are a common element of arguments on the questions presented on this issue, with the suggestion that takings plaintiffs (or facial-claim

defendants) are being treated unfairly. But access to federal courts for other types of plaintiffs did not expand in 1985 after *Williamson County*, or shrink in 2005 after *San Remo*, in a manner that created or exacerbated an unfairness or inconsistency. The world has not changed so "as to have robbed" these rules "of significant application or justification." *Planned Parenthood of Se. Pa. v. Casey*, 505 U.S. 833, 855 (1992) (plurality) (citing *Burnet*, 285 U.S. at 412 (Brandeis, J., dissenting)). These rules have not "proven to be intolerable simply in defying practical workability." *Casey*, 505 U.S. at 854 (citing *Swift & Co. v. Wickham*, 382 U.S. 111, 116 (1965)).

1. For the most part, the *Williamson County* requirements have worked.

The current tests for ripeness respect federalism interests. They give state and local governments the opportunity to respond to potential takings claims by steering them toward less-severe outcomes before a final decision, by providing an adequate right to recover just compensation, or both.

The requirements also accommodate the needs of overloaded federal courts. The litigation experiences of APA members indicate that typical regulatory takings claims are not facial challenges or suits presenting a viable claim of a categorical taking. Most often, they are fact-intensive claims most appropriately considered under the multi-factor intermediate-scrutiny analysis commonly attributed to *Penn Central Transportation*

Co. v. New York City, 438 U.S. 104 (1978). Except for a specialized court such as the U.S. Court of Federal Claims, federal district courts do not regularly review land-use decisions. State courts do. State courts generally possess the institutional expertise, desire, and patience to get "down in the weeds" as to factual issues, state and local procedural nuances, and the delicate balances demanded by the *Penn Central* factors.

Experience has also demonstrated that the process of meeting the *Williamson County* requirements often filters out meritless cases before they burden federal court dockets. Although it is unwise to paint with too broad a brush on a subject like this, it is commonplace to see unsuccessful applicants (or neighbors of successful applicants) equate a disappointing outcome of the land-use-approval process with an unconstitutional taking. Such plaintiffs rarely make the same mistake a second time, after a state court has educated them about the important differences between unfavorable outcomes and unconstitutional takings.

Williamson County's second prong has steered both property owners and government defendants toward those courts that are more apt to undo a confiscatory decision with the least amount of delay. Speedy invalidation is usually the most effective and cost-efficient remedy for an unlawful or otherwise confiscatory decision. State courts have little reluctance to invalidate the denial of a permit or other land-use application if the evidence demonstrates that the denial was unlawful, without the need to reach any constitutional questions. By contrast, the need for a substantial federal

question often causes motion practice in federal court land-use lawsuits to address questions of federal law before questions of state law. Then, if the federal causes of action are dismissed at an early stage, often the relatively more promising claims (arising under state law, seeking invalidation) are reached, if at all, once the case is re-filed in (or remanded to) state court, usually after a further round of motions. If *Williamson County*'s second prong is eliminated, the most meaningful and appropriate type of relief will more often be delayed for the considerable number of land-use plaintiffs with claims that are valid under state zoning law, but fall short of constituting valid federal takings claims.

2. Nevertheless, excessive applications of the *Williamson County* second prong have occurred, which this Court can and should prevent.

a. Fifth Amendment takings jurisprudence must provide the floor when state courts decide state-law takings claims.

In *Williamson County*, this Court reaffirmed that the second prong only applies where "a 'reasonable, certain and adequate provision for obtaining compensation' exist[s] at the time of the taking." 473 U.S. at 194 (quoting *Cherokee Nation*, 135 U.S. at 659). Accordingly, "if a State provides an *adequate procedure* for seeking just compensation, the property owner cannot claim a violation of the Just Compensation Clause until it has used the procedure and been denied just compensation." *Id.* at 195 (emphasis added). The Court also

described the requirement as "satisfied by a *reasonable and adequate provision* for obtaining compensation after the taking." *Id.* (emphasis added).

In evaluating the adequacy of state-law takings claims, this Court has not directly dealt with inadequate formulations of the takings tests at the local level. But this Court has implicitly recognized the role of federal takings jurisprudence when state courts decide state-law takings claims. This Court has granted certiorari to at least one state appellate court to review questions related to whether the petitioner may have a valid Fifth Amendment takings claim. *See Murr v. Wisconsin*, 137 S. Ct. 1933, 1939 (2017); *cf. Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595, 599 (2013) (granting certiorari and reversing Florida state court takings decisions under the unconstitutional conditions doctrine). Because the availability of review by this Court depended on the presence of a substantial *federal* question, implicit in the Court's ability to review decisions on takings claims first brought in state court under *state* law (presumably because of *Williamson County*'s second prong) is that Fifth Amendment takings jurisprudence must provide the floor for state-court decisions on whether a taking has occurred.

To help ensure the adequacy of takings litigation in state court under state law when required by *Williamson County*'s second prong, the Court should make explicit what was implicit in its grants of certiorari in *Koontz* and *Murr*: that when takings plaintiffs attempt to comply with the second prong, federal takings

jurisprudence must provide the floor for state courts' evaluation of the plaintiffs' rights. Arguments that the Fifth Amendment would entitle the takings plaintiff to relief should be fully relevant to determinations of whether state law should be construed to allow relief. Therefore, they should be welcome in state-court proceedings undertaken pursuant to *Williamson County*'s second prong.

b. Takings plaintiffs should not be forced to use state procedures that, in practice, do not provide constitutionally meaningful avenues for obtaining compensation.

This Court has provided little guidance to lower federal courts about when a state-law cause of action falls short of being "reasonable," "certain," or "adequate" within the meaning of the second prong of *Williamson County*. In most (but not all) lower federal courts, once a particular state's inverse condemnation procedure was found "adequate" in at least one federal appellate ruling, in later cases the question of its adequacy was thereafter treated as established law, and seldom if ever revisited. *See, e.g.*, *Koscielski v. City of Minneapolis*, 435 F.3d 898, 903 (8th Cir. 2006). *But see Coles v. Granville*, 448 F.3d 853, 865 (6th Cir. 2006) (explaining the Sixth Circuit's evolving analysis of whether Ohio's mandamus remedy provides an adequate remedy under the *Williamson County* second prong).

In lieu of totally federalizing takings litigation, the Court should focus on the adequacy of state remedies

to resolve those claims. The Court should seek out opportunities to clarify what is minimally necessary for a state-court procedure to be "reasonable," "certain," or "adequate" within the meaning of the second prong. This should include consideration of the timeliness of final adjudications of takings claims in a state's court systems.[3]

If state law fails to provide a potential compensation remedy for a genuine taking, the state procedures should be deemed inadequate, regardless of whether state law provides an avenue to overturn the decision that gives rise to the takings claim.

If the only potential compensation remedy provided under state law does not permit a plaintiff or petitioner to supplement the administrative record to include additional evidence related to whether there was a taking, that procedure should also be considered inadequate. Potential takings plaintiffs appearing before a local board or tribunal should not be forced to simultaneously prosecute an application for a land-use approval and build a complete factual record that denial of the application would constitute a taking.

---

[3] The roots of *Williamson County*'s second prong reflect the relevance of the timeliness of potential compensation. *See Joslin Mfg. Co.*, 262 U.S. at 677 ("It has long been settled that the taking of property for public use by a state or one of its municipalities need not be accompanied or preceded by payment, but that the requirement of just compensation is satisfied when the public faith and credit are pledged to *a reasonably prompt ascertainment and payment*. . . .") (emphasis added).

c. Plaintiffs and defendants should receive equivalent access to federal fora.

Lower federal courts have not been perfectly consistent in applying *Williamson County*'s second prong both to plaintiffs filing in the first instance in federal courts and to defendants removing cases to federal court. Critics of the second prong (and some lower federal courts) have interpreted *City of Chicago v. International College of Surgeons*, 522 U.S. 156 (1997), as permitting or requiring a double standard that allows defendants but not plaintiffs to obtain a federal venue for a takings claim.

The Court should side with those lower court rulings that have treated takings plaintiffs and defendants equally, and have not permitted a federal takings claim to become the sole basis for federal removal jurisdiction if that suit could not have been filed in federal court by the plaintiff.

Under a fair reading of *Williamson County* and *International College of Surgeons*, an unripe federal as-applied takings claim, by itself, cannot create federal jurisdiction—whether that jurisdiction is sought by a plaintiff or by a removing defendant.[4] Thus, when a

[4] Federal jurisdiction was present in *International College of Surgeons* **in spite of**, not because of, the plaintiff's inclusion of a federal takings claim. As lower court rulings in that case show, the plaintiff's complaint in that action included a variety of other federal causes of action, any one of which was sufficient to support federal jurisdiction and thus to support removal. *See Int'l Coll. of Surgeons v. City of Chi.*, Nos. 91 C 1587, 91 C 5564, 1992 WL 6729, at *4 (N.D. Ill. Jan. 10, 1992). Indeed, the federal takings claim

defendant removes an as-applied takings suit (with no other ripe basis for federal jurisdiction), federal courts should order a remand because of a lack of federal jurisdiction. *See, e.g.*, *Eggleston v. Pierce Cnty.*, 99 F. Supp. 2d 1280, 1282 (W.D. Wash. 2000) ("I find that the removal by Defendants of plaintiff's inverse condemnation state claim to federal court is improper pursuant to the *Williamson County* ruling that unequivocally requires an exhaustion of state remedies before an attempt to obtain a remedy in federal court."). Correctly interpreted, the two decisions create no unequal access to federal courts, no unfairness, and no discrimination against plaintiffs. If, as in *International College of Surgeons*, the takings claim is joined with at least one other federal cause of action, and at least one of those claims is ripe, then the case may be filed in federal court or removed to federal court. In that setting as well, the access to federal courts of plaintiffs and defendants is equivalent.

d. *Williamson County*'s second prong should apply only to takings claims.

Some lower federal courts have taken *Williamson County*'s second prong too far, applying it to constitutional claims that are not takings claims.

The textual justification for the *Williamson County* second prong is the special need for completeness due to the "without just compensation" clause. That

---

had been dismissed by the district court in an early Rule 12(b)(6) ruling. *Id.* at *2.

justification arises from language in the Takings Clause of the Fifth Amendment that is not in the Equal Protection Clause or the Due Process Clause of the Fourteenth Amendment. Despite that, some courts have extended *Williamson County*'s second prong to equal-protection or due-process claims. *See, e.g.*, *Rosedale Missionary Baptist Church v. New Orleans City*, 641 F.3d 86, 91 (5th Cir. 2011); *Patel v. City of Chi.*, 383 F.3d 569, 507 (7th Cir. 2004); *Country View Estates @ Ridge LLC v. Town of Brookhaven*, 452 F. Supp. 2d 142, 156 (E.D.N.Y. 2006). Indeed, a panel of the Seventh Circuit has gone so far as to announce (when affirming the dismissal of a procedural-due-process claim) that "[l]abels do not matter. A person contending that state or local regulation of the use of land has gone overboard must repair to state court." *River Park, Inc. v. City of Highland Park*, 23 F.3d 164, 167 (7th Cir. 1994).

This Court should take the opportunity to make it clear that *Williamson County*'s second prong applies only to takings claims. As many U.S. Courts of Appeals have recognized, there is no reason to require the second prong of *Williamson County* in non-takings claims, because those constitutional rights have no counterpart to the "without just compensation" language of the Takings Clause. *See, e.g.*, *John Corp. v. City of Houston*, 214 F.3d 573, 584 (5th Cir. 2000); *McKenzie v. City of White Hall*, 112 F.3d 313, 317 (8th Cir. 1997); *Strickland v. Alderman*, 74 F.3d 260, 265 (11th Cir. 1996); *Acierno v. Mitchell*, 6 F.3d 970, 977 n.17 (3d Cir. 1993); *Southview Assocs., Ltd. v. Bongartz*, 980 F.2d 84, 96–97 (2d Cir. 1992), *cert. denied*, 507 U.S. 987 (1993); *Sinaloa*

Lake Owners Ass'n v. City of Simi Valley, 882 F.2d 1398, 1404–07 (9th Cir. 1989), *cert. denied*, 494 U.S. 1016 (1990), *overruled on other grounds by Armendariz v. Penman*, 75 F.3d 1311, 1326 (9th Cir. 1996).

CONCLUSION

By overruling the general requirements of *Williamson County* or the facial-takings-claim exception in *San Remo*, the Court would risk injury to itself as an institution. As a plurality of this Court noted in *Casey*:

> There is a limit to the amount of error that can plausibly be imputed to prior Courts. If that limit should be exceeded, disturbance of prior rulings would be taken as evidence that justifiable reexamination of principle had given way to drives for particular results in the short term. The legitimacy of the Court would fade with the frequency of its vacillation.

Casey, 505 U.S. at 864–66.

Instead, the Court should work within the framework of its existing precedents, to repudiate misinterpretations by a small number of lower federal courts, and to provide clearer guideposts to state courts when

they consider state-law takings claims pursued because of *Williamson County*'s second prong.

Respectfully submitted,

JOHN M. BAKER
Counsel of Record
KATHERINE M. SWENSON
GREENE ESPEL PLLP
222 S. Ninth Street
Suite 2200
Minneapolis, MN 55402
(612) 373-0830
jbaker@greeneespel.com

Counsel for Amicus Curiae

May 31, 2018