No. 17-647

In the Supreme Court of the United States

ROSE MARY KNICK,

Petitioner,

v.

TOWNSHIP OF SCOTT, PENNSYLVANIA, *et al.*,

Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Third Circuit

BRIEF OF SAN REMO HOTEL, L.P., THOMAS FIELD, ROBERT FIELD, FRANKLIN KOTTSCHADE, PEYMAN PAKDEL, AND SIMA CHEGINI AS *AMICI CURIAE* IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

Whether the Court should reconsider the portion of *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172, 194-96 (1985), requiring property owners to exhaust state court remedies to ripen federal takings claims, as suggested by Justices of this Court? *See Arrigoni Enterprises, LLC v. Town of Durham*, 136 S. Ct. 1409 (2016) (Thomas, J., joined by Kennedy, J., dissenting from denial of certiorari); *San Remo Hotel, L.P. v. City and County of San Francisco*, 545 U.S. 323, 348 (2005) (Rehnquist, C.J., joined by O'Connor, Kennedy, and Thomas, JJ., concurring in judgment).

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INTEREST OF *AMICI CURIAE*[1]

All of the *amici curiae* here have experienced first hand the procedural gauntlet created by *Williamson County Planning Commission v. Hamilton Bank of Johnson City*, 473 U.S. 172 (1985). The primary purpose of this brief is to make sure that the Court understands that the conflicts and confusion created by *Williamson County* are not simply the stuff of law review articles and rarefied judicial debates on jurisdictional ripeness. This issue has real world consequences. It affects families, businesses, and livelihoods – including many people who are not large developers. Indeed, all of the *amici* spent (or face the prospect of spending) years trying to overcome the virtually insurmountable hurdles that *Williamson County* has erected for Takings plaintiffs. Despite good faith attempts to comply with this Court's ripeness requirements, they have been relegated to a procedural purgatory. Unless this Court reverses *Williamson County*, it will simply be impossible for Takings plaintiffs like *amici* to obtain a federal court decision on the merits of their federal constitutional claims.

San Remo Hotel, L.P., Thomas Field, and Robert Field (all referred to as the "Field Brothers") spent twelve years of litigation bouncing between the state and federal courts – all without ever obtaining a

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[1] Pursuant to Supreme Court Rule 37.6, *amici curiae* state that no counsel for any party authored this brief in whole or in part, and no entity or person, aside from *amici curiae*, made any monetary contribution toward the preparation or submission of this brief. Pursuant to Supreme Court Rule 37.3, counsel of record for all parties have consented to this filing via blanket consents filed with the Clerk's Office.

federal court determination of the merits of their Takings claim. Mr. Kottschade spent eight years litigating in state and federal courts -- again without obtaining a federal court determination of his Takings claim.

Mr. Pakdel and Ms. Chegini started just one year ago in their effort to obtain a federal court determination of their Takings claim. The district court followed *Williamson County* and determined that their Takings claim should be decided in the state courts. Mr. Pakdel and Ms. Chegini are appealing to the Ninth Circuit. *Pakdel v. City and County of San Francisco*, No. 17-17504.

The interest of the Field Brothers and Mr. Kottschade in this case is not obvious. The Field Brothers lost their state law claims, and never received a federal court determination of their Takings claim due to this Court's decision in *San Remo Hotel, L.P. v. City and County of San Francisco*, 545 U.S. 323 (2005). Mr. Kottschade was more fortunate – after an eight-year effort to obtain a federal court determination of his Takings claim, Mr. Kottschade and the City of Rochester finally settled on the eve of trial in the Minnesota state courts.

The Field Brothers and Mr. Kottschade do not have a live Takings Claim that could be affected by the Court's ruling in *Knick*. Nor do they currently expect any government to take any more of their property. Nevertheless, they have agreed to pay half of the attorneys' fees for this brief because they want this Court to understand that *Williamson County* has adverse consequences that severely affect any property owner whose property is taken by the government. To

this day, the Field Brothers and Mr. Kottschade believe that the government took their property in violation of the Fifth Amendment. Whether their belief is right or wrong, the rule created by *Williamson County* condemned their claims to a litigation quagmire. When combined with the decision in *San Remo Hotel*, the federal courthouse doors have been slammed shut to Takings plaintiffs.

Not only do property owners have little political clout to protect themselves from governmental actions, many of them are small business owners (or just homeowners, like Mr. Pakdel and Ms. Chegini) with relatively limited resources to litigate a Takings case against the government. Moreover, closing the door to the federal courts is not a minor impediment to the vindication of this right. It is an obstruction that undermines the primary purpose of the Fifth Amendment: to protect individual property owners from the unfettered actions of governments.

Almost by definition, governments do not take property from a majority: a suburban town does not take every single-family home in town and a city does not take every downtown office building. Instead, governments take property from a politically powerless minority – and governments do so for a politically popular purpose – whether that purpose is affordable housing, new and better roads, open space, etc. It is all too easy for legislators to impose exactions on a few property owners, rather than explain tax increases to all of the voters. The protection of minorities from majority rule animates the purpose of both the Fifth Amendment and the jurisdiction of the federal courts. After all, judges in the 39 states where judges stand for

election and must answer to the same citizens that elected the legislators who decided to take the property in the first place.

The Field Brothers and Mr. Kottschade could simply rely on the institutional *amici*, who will surely file briefs in this case. Instead, they want this Court to understand that those institutional briefs complaining about *Williamson County* are not raising theoretical concerns and are not speaking about issues that only concern wealthy, corporate developers. Instead, this is a real problem that affects individual citizens and small businesses. The Field Brothers and Mr. Kottschade have decided to spend money on this brief to make sure that the Court considers their experiences in deciding this issue.

The litigation gauntlets endured by the Field Brothers and Mr. Kottschade should stop all but the most foolish (and confident) Takings plaintiffs from following in their footsteps. Their participation as *amici* in this case is in the hope that their litigation sagas play a role in persuading this Court to overrule *Williamson County* so that future Takings plaintiffs have an opportunity to present their constitutional claims in the federal courts.

By contrast, the interest of Mr. Pakdel and Ms. Chegini is obvious. They are out-of-state residents who asserted a Takings claim against a San Francisco ordinance that required them to grant a life tenancy in the home that they plan (or, rather, planned) to live in when they retire. Their claim was dismissed by the district court based on *Williamson County*. They have an appeal pending in the Ninth Circuit, which would be decided in their favor if this Court reverses *Williamson*

County. In that event, they would be able to pursue their Takings claim in the federal courts – as would have been their right with any other federal constitutional claim. Their hope is that they can have that adjudication, rather than simply surrendering their fate to the California state courts. In order to advance their own case, they are paying half the cost of this brief.

SUMMARY OF ARGUMENT

This Court should overrule *Williamson County* for two reasons.

First, the decision was badly reasoned and it undermines the fundamental purpose of the Fifth Amendment: "to bar Government from forcing some people alone to bear public burdens which, in all fairness, should be borne by the people as a whole." *Armstrong v. United States*, 364 U.S. 40, 49 (1960). The fundamental premise of *Williamson County* was that once a Takings plaintiff has been denied compensation by the state courts, that plaintiff would have a ripe federal constitutional claim. But, this Court's decision in *San Remo Hotel, L.P. v. City and County of San Francisco*, 545 U.S. 323 (2005) undermines that fundamental premise of *Williamson County*.

Second, the past thirty years of experience with the actual operation of the litigation gauntlet created by *Williamson County* shows that the rule is unworkable. The experiences of *amici* demonstrate that the path to a federal court decision on a Takings claim is very long and expensive. But, more importantly, their experiences show that *Williamson County* slammed

shut the federal courthouse doors on Takings plaintiffs. The consequence of shutting the federal courthouse doors is to make this Court the only federal court with clear jurisdiction to participate in the evolution of Takings law. That was not the intent of the *Williamson County* ruling and demonstrates its unworkability.

ARGUMENT

I. The Field Brothers Proved, the Hard Way, that a Takings Plaintiff Cannot Obtain a Federal Court Decision on the Merits of a Takings Claim

After a three-year process in its administrative agencies, San Francisco reinstated the Field Brothers' historical right to rent the San Remo Hotel rooms to tourists on a daily basis – but only if they paid an exaction in the amount of $567,000 to be used for affordable housing programs.

In 1993, the Field Brothers filed suit in the District Court for the Northern District of California, alleging a Takings claim. The district court ultimately dismissed the Takings claim as unripe based on *Williamson County*. In 1998, the Ninth Circuit affirmed that decision. *San Remo Hotel, L.P. v. City and County of San Francisco*, 145 F.3d 1095 (9th Cir. 1998).

In 1998, the Field Brothers filed suit in state court – with an express reservation of their federal Takings claim for subsequent adjudication in federal court. The state trial court rejected their state law claims for compensation. The California Court of Appeal reversed that decision. In 2002, the California Supreme Court reversed the Court of Appeal, expressly

acknowledging the reservation of the federal Takings claim. *San Remo Hotel, L.P. v. City and County of San Francisco*, 27 Cal.4th 643, 649, n.1, 689 and 704 (2002).

In 2003, when the Field Brothers returned to the federal courts, the district court and the Ninth Circuit found that the California Supreme Court decision on the state law claims barred the federal Takings claim. Finally, in 2005, this Court upheld that decision. *San Remo Hotel, L.P. v. City and County of San Francisco*, 545 U.S. 323 (2005).

II. Kottschade Shows that the Path of a Takings Plaintiff is Long and Hard – Even to Reach a Settlement

After a nine-year odyssey through the administrative process to obtain a building permit, Mr. Kottschade finally obtained a permit and filed suit in the District Court for the District of Minnesota in 2001. He alleged that the permit conditions were exactions that violated the Takings Clause and he sought just compensation. In 2002, the district court dismissed the federal case, holding that Mr. Kottschade's claims were not ripe because he had not sought compensation in the state courts as required by *Williamson County*.

Mr. Kottschade appealed to the Eighth Circuit, which affirmed the district court decision based on *Williamson County*. Anticipating that result, Mr. Kottschade asked the Eighth Circuit to hold that an adverse state court decision would not bar him from filing a subsequent Takings claim in federal court. The Eighth Circuit was sympathetic, stating that his "suggestion has the virtue of logic and is tempting." *Kottschade v. City of Rochester*, 319 F.3d 1038, 1041

(8th Cir. 2003). However, the Eighth Circuit held that the effect of claim or issue preclusion should not be decided until after the state court proceedings were completed. *Id*. at 1042. This Court denied Mr. Kottschade's *certiorari* petition. 540 U.S. 825 (2003).

After several years of negotiations, Mr. Kottschade filed suit in state court in 2006. The state trial court granted Rochester's motion for summary judgment based on a statute of limitations defense. Mr. Kottschade successfully appealed to the state appellate court, which found that his claims were not time barred.

In 2009, on the eve of trial in the state court, Mr. Kottschade and Rochester reached a settlement. Since there never was a final decision in the state court, there was also no decision about the effect of an adverse state court judgment on his Takings claim. Of course, there also was no federal court determination on the merits of his Takings claim.

Although Mr. Kottschade finally reached a settlement, his litigation path was long, difficult, and needlessly expensive. Not only was he required to litigate his case, he also decided to advance his personal litigation by joining in *amicus* briefs filed in this Court in support of *certiorari* and on the merits in *San Remo Hotel*; and in support of *certiorari* in *Braun v. Ann Arbor Charter Township*, No. 08-250.

III. Pakdel and Chegini Have Just Started to Follow in the Footsteps of San Remo and Kottschade

Mr. Pakdel and Ms. Chegini filed their complaint alleging a Takings claim in the District Court for the Northern District of California in 2017. The district court promptly dismissed their Takings claim based on *Williamson County*. The opening brief for their appeal to the Ninth Circuit was just filed in April 2018. Thus, they are at the very beginning of the litigation ordeal created by *Williamson County*.

IV. *Amici* All Had or Have Constitutional Claims that Deserve Consideration by a Federal Court with an Article III Judge

Of course, the merits of *amici*'s claims are not relevant to this case, but a brief description of their Takings claims shows that they are serious constitutional claims worthy of consideration by the federal courts. After all, the federal courts have Article III judges, who are protected (at least after appointment) from political pressures. By contrast, many state courts judges have no such protection and must stand for election. That is true of the judges in California and Minnesota, as well as in 37 other states around the country. Brennan Ctr. For Justice, *Judicial Selection: An Interactive Map*, http://judicialselection map.brennancenter.org (visited 6/2/18). As a result of *Williamson County*, Takings plaintiffs face a judiciary that is subject to the same political pressures as the state and local legislators who adopted the laws that resulted in the alleged Takings. Of course, the whole point of the Bill of Rights is to protect minorities from

the improper exercise of governmental power, which is exercised in response to the wishes of the majority.

A. San Remo Hotel Challenged San Francisco's Residential Hotel Ordinance

The San Remo Hotel was built after the 1906 earthquake by A.P. Giannini, the founder of Bank of America. The Field Brothers purchased the San Remo Hotel in 1971. By that time, it had become dilapidated. The Field Brothers devoted considerable effort and completed a restoration of the hotel in 1976. San Francisco granted them a hotel license, which authorized unlimited tourist use of the hotel.

In 1979, San Francisco adopted the Residential Hotel Unit Conversion and Demolition Ordinance. San Francisco Administrative Code § 41. In short, it provided that any hotel rooms that had been occupied by the same person for at least 32 days as of September 23, 1979 would be designated a residential room. During the tourist season, those rooms could be rented on a daily basis to tourists; but during the rest of the year, those rooms must be rented by the week or by the month.

The ordinance was intended to protect affordable housing in San Francisco and effectively reserve space for the homeless. That is a politically important issue today and it was similarly important in 1979. The same is true of the political popularity of saddling a few hotel owners with the costs of housing the homeless rather than raising taxes. Of course, San Francisco understood that it was imposing a significant economic cost on the owners of these newly designated residential hotel rooms. As a result, it allowed owners

to escape the regulations, but at a price: 40% of the cost of constructing new housing to replace the hotel rooms that had been designated as residential units.

Over time, the ordinance was amended to make it more onerous. In 1990, the ordinance was amended to severely restrict the allowable tourist use of rooms designated as residential hotel rooms and to increase the exaction imposed for changing the designation from 40% to 80% of the cost of constructing new housing. The exaction was imposed because adequate public funding for affordable housing was no longer available. San Francisco Admin. Code § 41.3. In 1990, the Field Brothers applied and, in 1993, their historic right to rent rooms to tourists on a daily basis was restored. The Board of Supervisors imposed an exaction in the amount of $567,000. One dissenting Supervisor called the exaction "organized extortion".

The owners of hotels subject to this regulation are a very small subset of the hotel industry in San Francisco and had little political power. By contrast, there was great popular appeal of a regulation that preserved housing for low income residents and only imposed the consequences on that small group of hotel owners. In the political process, there was no contest.

B. Kottschade Challenged Onerous Conditions Imposed on His Development Permit

Mr. Kottschade was born and raised on a farm near Rochester. He has lived in Rochester since 1965 and raised his family there. He did construction work to pay for his college education. Eventually, he made his career as a realtor and home builder.

Mr. Kottschade purchased a parcel of land in Rochester for development purposes in 1992. From 1992 to 2001, he went through multiple proposed development applications. At one point, Rochester imposed a condition requiring him to create a man-made lake. On its face: a nice (albeit expensive) addition to his development plans. The only wrinkle: the Minnesota Department of Natural Resources refused to issue the necessary permits to create the lake.

By 2001, Rochester issued a final decision granting a permit to develop the property, but it imposed myriad, onerous conditions. Among the conditions was a requirement that he widen an adjacent public road and install ponds for regional storm water management. The net economic effect of the exactions was to reduce the number of townhomes that he could build from 104 units to 26 units, which increased the development cost of each home from $22,000 to $90,000 per unit.

Mr. Kottschade challenged the conditions on the ground that they were unconsitutional exactions. As this Court has held, exactions imposed as conditions of a development permit must be based on an

"individualized determination" of the impacts caused by the development, and the government must prove both an "essential nexus" and "rough proportionality" between the development's impact and the imposed exaction. *Nollan v. California Coastal Commission* 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994)

Like the ordinance San Francisco imposed on the San Remo Hotel, the type of conditions imposed on Mr. Kottschade are popular: voters like free road widening and free stormwater management much more than higher taxes. By contrast, a single home builder does not have the political clout to prevent government from singling them out to bear burdens that should be shared by all taxpayers.

C. Pakdel and Chegini Are Challenging a Lifetime Lease Requirement

Mr. Pakdel and Ms. Chegini live in Akron, Ohio. They want to live in San Francisco when they retire. They bought an apartment in a six-unit building in San Francisco with the plan of renting it to a tenant until they are ready to retire. San Francisco has very strict limits on the conversion of apartment buildings into condominiums or coops. The primary purpose of those restrictions is to minimize the conversion of rent-controlled units into owner-occupied units. As a result, a new form of ownership developed, known as TICs (tenants in common). TICs are units in apartment buildings (typically 2-6 units) which are owned by multiple owners. Typically, there is a TIC agreement between the owners of all of the units that is designed to mimic the obligations of the owners of a condominium or coop building.

When Mr. Pekdal and Ms. Chegini bought their TIC in 2009, San Francisco allowed TIC buildings with 2-6 units to convert to condominiums – by complying with a number of restrictions and then participating in a lottery allowing the conversion of no more than 200 units per year. Mr. Pekdal and Ms. Chegini were parties to a standard TIC agreement requiring all of the owners to participate in an application to convert to condominiums as soon as it was legally allowed, i.e., when they won the lottery.

San Francisco changed the conversion rules in a very important way in 2013: owners of 2-6 unit buildings were still allowed to convert to condominiums, but they were required as a condition of the conversion to grant a lifetime lease to any existing tenants. San Francisco Subdivision Code § 1396.4(g). At first blush, this seems similar to many rent control ordinances, but there is a critical difference: this requires the owner to grant a real property interest to the tenant. By contrast, rent control ordinances restrict the owner's right to terminate a month-to-month tenancy, but they do not create a long-term tenancy. Restricting the grounds for termination may have the real world effect of extending the tenancy for a long time. However, most rent control ordinances do allow some ability to terminate rent controlled tenancies for reasons such as the owner's intent to move into the property themselves. Moreover, rent control ordinances are subject to amendment, but once a lifetime lease is granted to a tenant it is beyond the control of amendments to the rent control ordinance.

As a result of their contractual commitment to the other TIC owners in their building, Mr. Pekdal and Ms. Chegini made an offer of a lifetime lease to their tenant, who is much younger than they are. He accepted that offer. Their plan to live in that unit after they retire has been dashed by the change in the ordinance.

Again, as with the Field Brothers and Mr. Kottschade, the condominium conversion ordinance is very popular with the voters (and their elected officials) because it protects tenants from property owners. In San Francisco political campaign mythology, all tenants are poor, innocent victims oppressed by rich, evil landlords. The few TIC owners with tenants did not stand a chance at the Board of Supervisors. And, as non-residents, Mr. Pakdel and Ms. Chegini do not even have the right to vote in the election of one of the eleven Supervisors. The only protection of their rights can come from the courts.

V. The Fifth Amendment Protects Property Owners from Oppressive Actions by the Majority

These governmental schemes suffered by *amici* show that the political process cannot protect small groups of property owners from popular measures. The whole point of the Bill of Rights is to establish rights that are not subject to infringement by a majority – certain rights are to be protected regardless of the popularity of any particular infringement on those rights. Of course, in the context of Takings law, there is often a delicate question to draw the line between a regulation that is within the proper exercise of the state's police powers and a regulation that goes too far.

E.g., *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104, 124 (1978). But, the difficulty and delicacy involved in drawing such lines highlights the need for federal courts to be able to decide on the outer limit of the police power.

The point of describing *amici*'s Takings claims is not to persuade this Court of the merits of any of those claims. Rather, the purpose is to show that state court judges, who are not protected by Article III, are not the best deciders of these issues.

Of course, one of the important premises of the federal court's jurisdiction over federal questions is to enable plaintiffs (and defendants) to choose the federal courts to decide federal questions – that takes the questions out of the hands of politically motivated state court judges and into the hands of Article III judges. Even if the state court judges are fair, federal court jurisdiction is an important bulwark to insure that parties can choose to avoid the state courts – and their perceived unfairness.

The purpose of the Takings Clause is "to bar Government from forcing some people alone to bear public burdens which, in all fairness, should be borne by the people as a whole." *Armstrong v. United States*, 364 U.S. 40, 49 (1960) In the Field Brothers' case, the California Supreme Court split 4-3, with Justice Janice Rogers Brown pointing out in dissent:

> But private property, already an endangered species in California, is now entirely extinct in San Francisco. The City and County of San Francisco has implemented a neo-feudal regime where the nominal owner of property must use

> that property according to the preferences of the majorities that prevail in the political process—or, worse, the political powerbrokers who often control the government independently of majoritarian preferences.

San Remo Hotel, 27 Cal.4th at 692.

San Francisco is a peculiar case, even in California. Because San Francisco is the only combined city and county in California, the local judges are elected by precisely the same citizens who vote in the elections for Mayor, Board of Supervisors, and local initiatives. By contrast, other cities in California are located in counties with multiple cities, where judges are elected by county-wide vote. Thus, the popularity of a measure in a particular city matters less to a judge standing for election based on votes from the entire county.

Again, the point of this discussion is not to litigate the fairness of the San Francisco courts. Instead, the purpose is to use it as an example (perhaps an extreme example) of the reasons that Takings claims are deserving of consideration by federal judges who are constitutionally protected from political pressures.

VI. There is no Sound Rationale for the Rule in *Williamson County* and *Amici* Have Proven that it is Unworkable

The fatal flaw of *Williamson County* is that it treats the Takings Clause as a "poor relation" of the other rights secured by the Bill of Rights. (See *Dolan*, 512 U.S. at 392 ("no reason why the Takings Clause of the Fifth Amendment, as much a part of the Bill of Rights as the First Amendment or the Fourth, should be relegated to the status of a poor relation"). There is no

good reason for that difference. In fact, the origin of the *Williamson County* decision is completely unclear: it appears to have been manufactured from whole cloth.

Professor Jesse Choper's theory in the 1980s was that several of the Court's Takings decisions could be explained as being part of a strategy devised by one or more members of the Court who were concerned that deciding regulatory Takings cases on the merits might result in precedent that would be difficult to overturn later. Professor Choper's theory was that those members of the Court were advocating one procedural ruling after another (regardless of the coherence of the decision) as a way to defer the creation of merits decisions until their views of Takings law were embraced by a majority. That theory explained *Agins v. City of Tiburon*, 447 U.S. 255 (1980) and *San Diego Gas & Electric Co. v. City of San Diego*, 450 U.S. 621 (1981), in addition to *Williamson County*. This Court expressly noted those prior cases in *Williamson County*: "The Court twice has left this issue [when state laws are regulatory takings beyond the police power] undecided. Once again, we find that the question is not properly presented, and must be left for another day." *Williamson County*, 473 U.S. at 185.

The correctness of Professor Choper's theory is unimportant. The fact that he proposed such a theory is evidence of *Williamson County*'s lack of doctrinal coherence, which has been roundly criticized by many commentators. RS Radford and Jennifer Thompson, *The Accidental Abstention Doctrine: After Thirty Years, the Case for Diverting Federal Takings Claims to State Court Under Williamson County Has Yet to be Made*, 67 Baylor L. Rev. 568, 570, n. 11 (2015) (collecting

critiques). As Radford and Thompson point out, "the reasoning behind *Williamson County* is opaque". *Id*. at 572.

While the Court's reasoning was opaque, one of its critical assumptions is clear throughout the opinion: once the state courts have made final determinations refusing to provide compensation, plaintiffs would be free to seek a federal court determination of their takings claim. *Williamson County*, 473 U.S. at 185, 186, 197, 200. For example, the opinion expressly states that the "property owner cannot claim a violation of the Just Compensation Clause until it has used the [state court] procedure and been denied just compensation." *Williamson County*, 473 U.S. at 195.

The opinion in *Williamson County* did not even mention the possible application of *res judicata* or collateral estoppel. Those consequences were not considered because the dispositive rule was first proposed in one of the last briefs filed in that case. Radford and Thompson, 67 Baylor L. Rev. at 574-575, 583. This Court's decision in *San Remo Hotel* demonstrates the importance of *res judicata* and collateral estoppel to any consideration of the implications of the *Williamson County* decision. The lack of such consideration is one of the reasons that the decision was wrong.

The net result of *Williamson County* and *San Remo Hotel* is that this Court has created a special rule for Takings plaintiffs – in complete disregard of the "unflagging obligation" of the federal courts to exercise the jurisdiction assigned to them by Congress. *Colorado River Water Conservation District v. United States*, 424 U.S. 800, 810 (1976).

CONCLUSION

Amici recognize that this Court is extremely reluctant to overrule its own decisions, and rightfully so. As Chief Justice Rehnquist explained, "Adhering to precedent 'is usually the wise policy, because in most matters it is more important that the applicable rule of law be settled than it be settled right.'" *Payne v. Tennessee*, 501 U.S. 808, 827 (1991) (citation omitted). But, "[*s*]*tare decisis* is not an inexorable command"; thus, "when governing decisions are unworkable or are badly reasoned, 'this Court has never felt constrained to follow precedent.'" *Id*. at 827-828. As stated by Justice Brandeis, the Court "bows to the lessons of experience and the force of better reasoning, recognizing that the process of trial and error, so fruitful in the physical sciences, is appropriate also in the judicial function." *Burnet v. Coronado Oil & Gas Co.,* 285 U.S. 393, 407-408 (1932) (dissenting).

Williamson County cries out for reversal. The decision was badly reasoned. The rule of law it created has been proven unworkable, as shown by the experiences of *amici* described in this brief.

Amici respectfully submit that the Court should overrule its decision in *Williamson County*.

Respectfully submitted,

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