

IN THE
Supreme Court of the United States

CITY OF MARATHON, FLORIDA,
Petitioner,

v.

RODNEY SHANDS, ET AL.,
Respondents.

**On Petition for a Writ of Certiorari
to the District Court of Appeal of Florida,
Third District**

**BRIEF OF MONROE COUNTY, FLORIDA
AS *AMICUS CURIAE*
IN SUPPORT OF PETITIONER**

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INTEREST OF *AMICUS CURIAE*¹

The City of Marathon is one of five municipalities within the Florida Keys portion of *amicus* Monroe County, a hurricane-prone island chain with renowned yet fragile marine and upland resources on which the County's thriving fisheries and tourism economies depend.

To protect those resources and ensure the safety of its residents, the County must balance a number of considerations and constraints. In 1979, the Florida Legislature designated Monroe County as an Area of Critical State Concern ("ACSC"). "ACSCs are parts of Florida that are susceptible to intense development and that have environmental, natural, or historical resources with statewide significance." W. Thomas Hawkins, *Land Use Law in Florida* 65 (2021). All development in the Florida Keys must be consistent with the Principles for Guiding Development ("Principles") imposed by the State. *See* Fla. Stat. § 380.0552(7). The Principles address a range of complex and sometimes competing issues including natural resource protection, water quality, affordable housing, property rights, and hurricane evacuation. *See Mattino v. City of Marathon*, 345 So. 3d 939, 945-46 (Fla. 3d Dist. Ct. App. 2022) (recognizing "the Florida Keys" face a "substantial challenge" in "attempting to balance the competing interests at stake"). The County is subject to oversight by the State of Florida's land planning

¹ Pursuant to Supreme Court Rule 37.6, counsel for *amicus* represent that they authored this brief in its entirety and that none of the parties or their counsel, nor any other person or entity other than *amicus* or its counsel, made a monetary contribution intended to fund the preparation or submission of this brief. This brief is being filed more than 10 days before its due date.

agency,² which must approve or reject all land development regulations that are enacted, amended, or rescinded by any unit of government in the Florida Keys ACSC. See Fla. Stat. §§ 380.05(6), (11), 380.0552(9); *Monroe Cnty. v. Ambrose*, 866 So. 2d 707, 711 (Fla. 3d Dist. Ct. App. 2003) (“The reason Monroe County was designated an area of critical state concern was to provide for an increased state role in decisions which have a statewide impact.”). The regulatory landscape of Monroe County is further complicated by the application of federal laws such as the Endangered Species Act, with entire islands subject to a Habitat Conservation Plan.

The County’s ability to allow additional residential dwelling units in the ACSC is constrained by Florida Statutes § 380.0552(9)(a)(2), which requires permanent residents to be safely evacuated in the event of a hurricane within 24.5 hours. “The potential impact of hurricanes on the Florida Keys is unlike any other area of the state. No local government in Florida faces a more unique and serious challenge to protecting its citizens from the impacts of hurricanes than Monroe County.” *Monroe Cnty. Chowder & Marching Soc’y, Inc. v. Department of Cmty. Affs.*, 1994 WL 1027567, at *254 (Fla. Div. Admin. Hrgs. July 17, 1995). The County therefore adopted the State-approved Rate-of-Growth Ordinance (“ROGO”) that is codified in Chapter 138 of the County’s Land Development

² The department known as Florida Commerce is the current state land planning agency. Those duties previously were exercised by the Department of Economic Opportunity from 2011 to 2023; by the Department of Community Affairs from 1986 to 2011; and by the Division of State Planning of the Department of Administration from 1972 to 1985.

Code (“LDC”).³ ROGO is a point-based system whereby applicants compete for the limited number of building allocations that the State can issue. After incorporating in 1999, the City of Marathon adopted almost identical permit allocation and transferable development rights (“TDR”) systems.

The decision below upsets decades of complex and careful planning informed by input from the local community and the State, as well as case law determining the County’s potential takings liability exposure. There are more than 6,000 vacant and privately held lots in the unincorporated portion of Monroe County,⁴ nearly a thousand of which are fully or partially submerged platted lots (plus an additional 400 non-platted parcels). The County’s land acquisition and planning efforts, especially as to the distribution of ROGO allocations and granting of TDRs, have been necessarily and carefully calibrated to favor the nearly 2,220 upland lots with potential development and viable takings claims under its existing regulatory scheme. If *Shands* takes root, the scope of the County’s total potential takings liability will increase exponentially. Owners of properties subject to regulations adopted long ago will have a new pathway to transform extinguished takings claims into new as-applied ones, simply by making futile applications for development. *Shands* also stymies the County’s efforts to use TDRs and other mechanisms to infuse

³ Available at <https://www.monroecounty-fl.gov/DocumentCenter/View/11259/LDC-Final-Adopted-Version---with-ORD-030-2016-change>.

⁴ See Monroe Cnty. Dep’t of Planning & Env’t Res., *ROGO Permit Allocation System* 14 (Mar. 20, 2024), <https://monroecounty-fl.gov/DocumentCenter/View/35417/ITEM-B-2-Presentation-to-BOCC---ROGO-3-20-2024?bidId=>.

properties otherwise burdened by necessary regulations with market value. This will be a planning and fiscal nightmare for the already-overburdened Florida Keys, as well as other local governments contending with similar environmental and emergency management constraints.

SUMMARY OF ARGUMENT

The City of Marathon's petition raises issues of critical importance to local governments such as Monroe County that administer urgent environmental and emergency management regulations affecting private property. *Shands* shifts the focus under *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), from objective "market value" to subjective "productive use," holding property may be categorically "taken" even when it retains significant market value from TDRs or recreational uses. This is a monumental shift for local governments that relied on this Court's pronouncement in *Penn Central Transportation Co. v. City of New York*, 438 U.S. 104 (1978), that TDRs "are to be taken into account in considering the impact of regulation." *Id.* at 137. These governments, like the County, spent decades implementing TDRs and other market-based programs to alleviate the economic impact of necessary regulations on property owners. *Shands* threatens to undo those efforts.

Shands also threatens the County and other local governments because it allows owners of properties subject to decades-old regulations to revive long-extinguished takings claims. By making futile applications for development, those property owners can manufacture new as-applied takings claims. And under *Shands*, those new claims will escape evaluation under the *Penn Central* factors. Instead of prompting

an examination of the magnitude of a regulation’s economic impact and the degree to which it interferes with legitimate property interests and expectations—thereby weeding out claimants with no reasonable investment-backed expectations—*Shands* will give those new claims categorical treatment under *Lucas*.

The City’s concern that local governments “can expect a flurry of suits from property owners seeking the benefit of the now expanded categorical rule” (Pet. 28) under *Shands* is not hypothetical. Such litigation has already begun: In the pending *Key Haven* litigation, for example, the plaintiff has relied on *Shands* to argue that its futile applications to fill submerged lots—a practice prohibited by environmental regulations for decades—resurrected its stale regulatory takings claims into “‘as-applied’ categorical regulatory takings claim[s].” Initial Br. at 18, *Key Haven Assoc. Enters., Inc. v. Florida Dep’t of Env’t Prot., et al.*, No. 1D2025-0660 (Fla. 1st Dist. Ct. App. Aug. 19, 2025) (“Key Haven Initial Br.”), 2025 WL 2491554.

Shands thus gives property owners a new and unanticipated pathway to manufacture takings claims and resurrect stale ones relating to regulations that have been on the books for decades. This Court should grant review to prevent the planning and fiscal nightmare this poses for the already-overburdened Florida Keys and other local governments similarly contending with environmental and emergency management constraints.

ARGUMENT

I. *SHANDS* REINVENTS TAKINGS JURISPRUDENCE TO EXPAND THE CATEGORICAL TREATMENT OF TAKINGS CLAIMS

While governments have broad authority to regulate property “to a certain extent, if regulation goes too far it will be recognized as a taking” under the Fifth Amendment. *Pennsylvania Coal Co. v. Mahon*, 260 U.S. 393, 415 (1922). Determining when a regulation goes “too far” generally requires a fact-intensive inquiry into “[t]he economic impact of the regulation on the claimant and, particularly, the extent to which the regulation has interfered with distinct investment-backed expectations.” *Penn Cent. Transp. Co. v. City of New York*, 438 U.S. 104, 124 (1978).

In *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992), this Court recognized that, in extraordinary and rare circumstances, a regulation’s impact on property is so extensive that it may be categorically deemed a taking, without weighing the *Penn Central* factors. That is, when “the owner of real property has been called upon to sacrifice *all* economically beneficial uses . . . , he has suffered a taking.” *Id.* at 1019.

Shands radically expanded the permissible application of *Lucas*’s categorical approach.

A. *Shands* Permits Categorical Takings Claims Even When The Property Retains Market Value

As the City’s petition explains (at 3), the proper measure of whether property retains “economically beneficial uses” is market value. The *Lucas* majority thus framed the case as requiring it “to decide whether the [Beachfront Management] Act’s dramatic effect on the economic value of Lucas’s lots accom-

plished a taking of private property.” 505 U.S. at 1007.

Shands, however, shifted its focus from objective “market value” to subjective “productive use.” In doing so, it opened the door to claims that property categorically may be “taken” even when it still holds significant market value. For example, as in *Shands*, a property may be unfit for residential development but still be valuable to the owner and on the market based on its TDRs or recreational uses. But under *Shands*, owners of such properties still may claim they have suffered categorical “takings.”

B. *Shands* Extends Categorical Treatment To “As-Applied” Takings Claims

The *Shands* majority misunderstood the claim in *Lucas* to be an as-applied takings claim, as opposed to a facial one. See App. 19a (“Lucas filed suit, alleging a categorical, as-applied taking. The trial court found that the [Beachfront Management] Act, as applied, permanently banned construction on the property, and that this prohibition constituted a deprivation of any reasonable economic use of the lots, rendering them valueless.”) (citation omitted). Property owners may bring as-applied claims when the effect of a regulation on property is unclear on its face and requires facts to determine whether a taking has occurred.

The distinction matters, *first*, because as-applied claims benefit from a delayed start to the applicable statute of limitations. An “as-applied” claim does not ripen until the property owner files at least one meaningful application for development that results in a government decision applying its regulation to the property and “decid[ing]” the “reach of” the regulation. *Palazzolo v. Rhode Island*, 533 U.S. 606, 620-21 (2001).

Second, as-applied and facial takings claims should prompt different analyses. Contrary to the *Shands* majority's characterization, *Lucas* did not involve an as-applied claim. *Lucas* involved two residential lots on the Isle of Palms in Charleston County, South Carolina. See 505 U.S. at 1006-07. The owner's development plans were halted when the State enacted the Beachfront Management Act, which barred the erection of any permanent habitable structure on the lots. *Id.* at 1008-09. But the owner never had to apply for a final decision, because the full extent of the Act's restriction on his property was known. *Lucas* was thus "[a]n example of a successful *facial* claim . . . where government regulation prohibited all beneficial use of Lucas' beachfront property The Court found that mere enactment of this use restriction rendered Lucas' property 'valueless.'" *Garneau v. City of Seattle*, 147 F.3d 802, 811 (9th Cir. 1998) (emphasis added). Because *Lucas* involved only a facial claim, the Court followed its categorical approach and eschewed the *Penn Central* factors. The impact of the regulation on the claimant was plain on its face—indeed, it had not been applied to the claimant at all—so there was no need for the fact-intensive analysis of its economic effect.

* * *

Shands thus significantly expands the reach of *Lucas*. According to the majority, even as-applied takings claims can be assessed under *Lucas*'s categorical approach, obviating the need for the fact-sensitive inquiry otherwise required by *Penn Central*. And property owners can bring such claims even when their properties retain significant market value after the government's action. That transformation of settled takings jurisprudence has substantial

implications on property owners' incentives to game the system and on local governments' ability to impose reasonable property use restrictions.

II. *SHANDS* PERMITS TAKINGS CLAIMS THAT WOULD BE BARRED UNDER APPLICABLE STATUTES OF LIMITATIONS AND THE *PENN CENTRAL* FACTORS

In what Judge Logue referred to as “an extraordinary feat of legal acrobatics” in his spirited and thoughtful dissent, the *Shands* majority held the City of Marathon liable for “a per se as-applied regulatory taking,” even though the Shands’s environmentally sensitive island still retained substantial actual value. App. 44a, 71a (Logue, J., dissenting). The majority was able to find a taking only by ignoring the facts that (a) the Shands did not take any investment-backed steps to develop the property from 1963 to 2004, and (b) the property retained \$147,000 in market value for its TDRs—a six-fold increase on the initial investment—and between \$46,000 and \$60,000 in value for recreational uses. *See* App. 89a-93a, 101a-108a.

By ignoring these realities, the majority permits the Shands and other property owners to avoid the applicable statutes of limitations for a categorical taking and escape evaluation under the *Penn Central* criteria.

A. *Shands*’s Recognition Of A Categorical “As-Applied” Taking Lets Property Owners Resurrect Long-Extinguished Claims

The majority opinion “somersault[ed] over . . . decades of well-established U.S. Supreme Court and

Florida precedents,” App. 44a (Logue, J., dissenting), including prior decisions of the Third District.⁵

The regulatory actions at issue in *Shands* were (a) Monroe County’s adoption of a comprehensive plan in 1986 that changed the zoning of the property to Conservation Offshore Island, which reduced allowable development to 1 unit per 10 acres and (b) the City’s adoption of that plan when it incorporated in 1999. *Shands v. City of Marathon*, 999 So. 2d 718, 721 & n.2 (Fla. 3d Dist. Ct. App. 2008) (“*Shands I*”). As *Shands I* correctly reasoned, “the mere enactment of the 1986 State Comprehensive Plan, or the City’s subsequent adoption of the 2010 Comprehensive Plan, did not preclude all economic use and value.” *Id.* at 725. The Shands thus had an as-applied claim—which required consideration of the *Penn Central* factors—that became ripe in 2007, when the City denied the Shands’s application for a Beneficial Use Determination (“BUD”). *Id.* at 726-27.

Shands I recognized that the categorical rule under *Lucas* is limited to “the extraordinary circumstance where there is no productive or economically beneficial use of the land.” *Id.* at 723 (quoting *Lucas*, 505 U.S. at 1017). The court understood that the issue of use turned on market value, stating “[t]he categorical rule of no use would not apply if the diminution in value were 95% rather than 100%.” *Id.* (citing *Lucas*,

⁵ See, e.g., *Collins v. Monroe Cnty.*, 118 So. 3d 872, 876 (Fla. 3d Dist. Ct. App. 2013) (finding no takings where “the Landowners did not take meaningful steps toward the development of their respective properties, or seek building permits, during the sometimes decades-long possession of their properties”); *Beyer v. City of Marathon*, 197 So. 3d 563, 566-67 (Fla. 3d Dist. Ct. App. 2016) (affirming summary judgment in favor of city and State because “[t]he award of ROGO points” (valued at \$150,000) and “recreational uses” satisfied the Beyers’ “economic expectations”).

505 U.S. at 1019 n.8). The court emphasized “the record indicates that not all economic value was or has been eliminated,” specifically noting the property’s value for TDRs and ROGO allocation points. *Id.* at 724. “Thus, the mere enactment of the ordinances at issue did not eliminate all economically beneficial use of the property.” *Id.* *Shands I* therefore remanded the case back to the trial court to evaluate the claim under the *Penn Central* factors. *Id.* at 727.

The *Shands* majority opinion, by contrast, disregarded the remaining value-infusing uses of the land. It characterized the remaining uses as mere “token” interests that “barred [the Shands] from improving or developing Shands Key in any manner,” requiring the island to be “perpetually preserve[d] . . . in its natural state.” App. 30a.

The upshot was that the Shands were allowed to escape the applicable statute of limitations. According to the majority’s rationale, the Shands lost the subjective “productive use” of their land once the density restriction at issue barred the erection of any permanent habitable structure on the island, thus requiring Shands Key to be left in its natural state. But if that were true, the Shands’s BUD application in 2007 should have been irrelevant—their categorical claim would have been ripe upon the adoption of the restriction decades earlier. Instead of finding the claim time-barred, the *Shands* majority let the Shands have it both ways: they could bring a takings claim based on decades-old regulations that supposedly categorically stripped their land of all value, but could ripen that categorical claim at will by submitting a futile application.

B. *Shands* Permits “As-Applied” Takings Claims To Ignore The Fact-Sensitive *Penn Central* Inquiry

While *Shands I* recognized this Court’s precedent requiring as-applied claims to be evaluated under the *Penn Central* factors, 999 So. 2d at 723, the *Shands* majority opinion never explains why it permitted the Shands’s as-applied claim to escape evaluation under the *Penn Central* factors. The court seemed to be relying on the categorical rule of *Lucas*, having arbitrarily disregarded the property’s TDR and recreational use value. *Lucas*, however, did not apply the *Penn Central* factors because it involved a facial as opposed to an as-applied claim at issue here.

In dissent, Judge Logue correctly observes “[t]he majority opinion clears the way for courts to quickly and easily declare laws a ‘categorical’ taking, thereby avoiding the deliberate and fact-intensive approach of *Penn Central*. Indeed, the majority opinion seems motivated to expedite and streamline the process to declare laws a taking.” App. 67a-68a (Logue, J., dissenting). The majority may have allowed the Shands to escape evaluation under the *Penn Central* factors precisely because they could not have prevailed under those factors: they made no effort to invest in the property and delayed for decades before seeking development approval.

In dispensing with the *Penn Central* inquiry that weighs “the magnitude of a regulation’s economic impact and the degree to which it interferes with legitimate property interests,” *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 540 (2005), *Shands* both encourages and rewards individuals to snatch up lots—like wetlands and submerged lands—that have been heavily regulated for decades. After *Shands*, individuals

can buy those lots with no genuine development expectations and win compensation regardless. It is not uncommon in the Florida Keys for real estate speculators to acquire heavily burdened properties for the sole purpose of manufacturing takings claims, and *Shands* now has made this maneuver easier. But the Fifth Amendment was not designed to protect such gaming of the system.

III. *SHANDS*'S SHIFT FROM OBJECTIVE "MARKET VALUE" TO SUBJECTIVE "PRODUCTIVE USE" IMPROPERLY RESTRICTS LOCAL GOVERNMENTS' ENVIRONMENTALLY NECESSARY CONSERVATION EFFORTS

This Court repeatedly has emphasized that market value, which is an objective standard, is the key to determining if a regulation has stripped a property of all economic use. *See Lingle*, 544 U.S. at 539 ("In the *Lucas* context, of course, the complete elimination of a property's value is the determinative factor."); *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Plan. Agency*, 535 U.S. 302, 330 (2002) (interpreting *Lucas* to hold that "[a]nything less than a complete elimination of value, or a total loss, the Court acknowledged, would require the kind of analysis applied in *Penn Central*") (cleaned up). *Shands* nonetheless shifts the focus under *Lucas* from objective "market value" to subjective "productive use," holding property may be taken even where it retains significant market value for TDRs or recreational uses.

A. Local Governments Rely On Market Realities To Craft Effective Regulations

As the dissent observed, "[w]hether the sale of a property for recreational uses produces meaningful value is not a question of constitutional law, it is a

question of fact dependent on supply and demand in the particular market at issue.” App. 60a (Logue, J., dissenting).

The “particular market at issue” for undeveloped properties in recreational playgrounds like the Florida Keys comes with a number of unique considerations, which the majority opinion failed to meaningfully consider:

Anyone who hunts or fishes knows that the market for land held in its natural state is growing as such land becomes scarcer. To deny this fact is to deny the basic tenant of supply and demand that underlies our free market economy. Indeed, studies have shown that land in its natural state can have substantial monetary value for hunting, fishing, camping, and other nature-oriented uses.

In the Keys’ real estate market, with its unique demand for recreational uses, a sale of an offshore island in its natural state for recreational use yields substantial value, according to the undisputed record before us. This should surprise no one familiar with the Florida Keys. The Keys draw visitors from across the globe for fishing, snorkeling, scuba diving, spearfishing, lobstering, kayaking, sailing, motorboating, windsurfing, and wildlife-observing.

App. 60a-61a (footnote omitted).

The County and countless other local governments relied on this Court’s holding in *Penn Central* that TDRs “are to be taken into account in considering the impact of regulation.” 438 U.S. at 137. *See also Good v. United States*, 39 Fed. Cl. 81 (Fed. Cl. 1997) (analyzing TDRs and related decisional authority and holding Monroe County’s TDR program was properly considered in a fair-market-value determination).

But as the dissent recognized, “[t]he majority opinion’s holding w[ill] upend this considered reliance in a manner that is breathtaking.” App. 56a (Logue, J., dissenting).

The County’s ROGO allows applicants to obtain extra valuable points by voluntarily acquiring and dedicating lots to the County. See LDC § 138-26(a)(5). To date, approximately 1,060 lots have been dedicated under the program. The County also has a TDR program, codified at LDC § 130-160. To date, the total acreage of TDR sender sites is approximately 400, and many large-scale developments in the County have depended on and continue to depend on TDRs. These market-based programs have catalyzed a thriving secondary real estate market that buys and sells vacant properties for their ROGO point and TDR values. Vacant lots are routinely marketed on the Multiple Listing Service as “ROGO Lots” for these values.

B. *Shands*’s Shift To “Productive Use” As The Benchmark For Categorical Claims Will Upend Decades Of Regulatory Planning

Shands thus represents a monumental shift for local governments like Monroe County that have spent decades implementing successful TDRs and other market-based programs in the wake of *Penn Central* to alleviate the economic impact of necessary regulations on property owners. *Shands* kneecaps those efforts.

As *Lucas* recognized, “‘takings’ jurisprudence . . . has traditionally been guided by the understanding of our citizens regarding the content of, and the State’s power over, the ‘bundle of rights’ that they acquire when they obtain title to property.” 505 U.S. at 1027. State and local governments must be able to “legitimate[ly] exercise . . . [their] police powers,” and,

accordingly, “the property owner necessarily expects the uses of his property to be restricted, from time to time, by various measures . . . ; as long recognized, some values are enjoyed under an implied limitation and must yield to the police power.” *Id.* (cleaned up). *Shands*, by contrast, failed to consider the effects of its rule on local governments’ “legitimate” and necessary regulatory efforts.

By holding regulations that have the effect of keeping property in its natural state as categorical takings even when the property still derives substantial value from TDRs and other uses, the court below functionally forces local governments to rescind regulations protecting natural resources, especially where the costs of conservation are high.

IV. SHANDS WILL ENCOURAGE PROPERTY OWNERS TO MANUFACTURE ARTIFICIAL TAKINGS CLAIMS AND REVIVE EXTINGUISHED ONES

The City correctly observes that *Shands* will encourage a flurry of suits from property owners seeking the benefit of the decision, including the now expanded categorical rule.

A. Opportunistic Investors Have Already Begun Taking Advantage Of *Shands*

The *Key Haven* litigation involving submerged lots in the Florida Keys, currently pending in the Florida First District Court of Appeal, is already an example of the unreasonable claims that can be expected post-*Shands*. See *Key Haven Assoc. Enters., Inc. v. Florida Dep’t of Env’t Prot., et al.*, No. 1D2025-0660 (Fla. 1st Dist. Ct. App.). The property owners in that case rely heavily on the decision below in asserting a categorical taking. The trial court in that case recognized the *Shands* decision as “the first Florida appellate

decision in this state’s regulatory takings jurisprudence to adopt [the] novel category of taking coined ‘*per se* as-applied.’” Order Denying Plaintiff’s Mot. for Partial Summary Judgment as to Liability on Count II – Inverse Condemnation at 27-28, *Key Haven Assoc. Enters., Inc. v. Florida Dep’t of Env’t Prot., et al.*, No. 2021 CA 001613 (Fla. Cir. Ct., Leon Cnty., Jan. 30, 2024), *appeal pending*, No. 1D2025-0660 (Fla. 1st Dist. Ct. App.). It also recognized many of the concerns that the City and its *amicus* supporters now bring to this Court’s attention.

The *Key Haven* trial court explained that “*Shands III*’s attempt to rebrand *per se* takings as ‘*per se* as-applied’ takings would have the further effect of essentially abolishing any statute of limitations in *per se*, or categorical, takings cases.” *Id.* at 29. That case is now on appeal to the Florida First District Court of Appeal. The property owner’s appellate brief continues to rely extensively on *Shands* to argue that the State’s denials of its futile fill and dredging applications resurrected its stale claims into “‘as-applied’ categorical” ones. *See Key Haven Initial Br.* at 6, 18-19, 21, 29, 35, 55, 56.

B. Similar Suits Likely Will Follow

If *Shands* remains good law, other opportunistic investors will pursue similar maneuvers. Futile applications—not motivated by any actual intention to develop land—can transform long-expired takings claims into “new” as-applied claims relating to regulations that have been on the books for decades. *Key Haven*’s reliance on *Shands* illustrates the dangers in allowing the revival of stale claims.

This Court has articulated multiple rationales for statutes of limitations that will be undermined as litigants continue to invoke *Shands*. Statutes of

limitations “promote justice by preventing surprises through plaintiffs’ revival of claims that have been allowed to slumber until evidence has been lost, memories have faded, and witnesses have disappeared.” *CTS Corp. v. Waldburger*, 573 U.S. 1, 8 (2014) (cleaned up).

In addition, property values in locations such as the Florida Keys have increased exponentially through the decades. Thus, if owners can revive expired claims by transforming them into as-applied ones with futile applications, they unfairly can capture the benefit of significant market value appreciation, because takings compensation is based on the value of property at the time of taking. That windfall would come at enormous cost to local governments and their taxpayers. As the *Key Haven* trial court recognized, “[a] ruling that Key Haven’s *per se* inverse condemnation claim is not barred by the statute of limitations would allow it to recover damages far in excess of its reasonable investment-backed expectations concerning the purchase, platting, and construction of the Tenth Addition.” *Key Haven* Order 30. This Court should grant certiorari to prevent that type of windfall.

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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