

IN THE
Supreme Court of the United States

JUDITH L. HARVEY, AS TRUSTEE OF THE
DAVID T. & JUDITH L. HARVEY TRUST, AND
AS PERSONAL REPRESENTATIVE OF THE
ESTATE OF DAVID T. HARVEY, DECEASED,

Petitioner,

v.

CITY OF RENO, *et al.*,

Respondents.

ON PETITION FOR A WRIT OF CERTIORARI TO THE
SUPREME COURT OF THE STATE OF NEVADA

REPLY BRIEF FOR PETITIONER

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REPLY BRIEF FOR PETITIONER

INTRODUCTION

Respondent City of Reno's Brief in Opposition, filed June 4, 2026, does not answer the question presented. It reframes a federal takings question as a state-law dispute over whether the Harvey Trust held an easement across the Green Acres Parcel, and it treats Nevada's answer to that state-law question as conclusive of the federal question, which is whether state action eliminating access to property constitutes a taking.

Each of Respondent's arguments rests on that premise, and the premise is foreclosed by this Court's decisions holding that the existence of a compensable property interest under the Fifth Amendment is a federal question a State cannot resolve in its own favor by declining to recognize the interest it has destroyed.

STATEMENT

The Harvey Trust owns a parcel near the intersection of Interstate 580 and Huffaker Place in Reno, Washoe County, Nevada. The property has been in the Harvey family since the mid-1800s, predating Nevada's statehood. In 1987, in connection with the construction of Interstate 580, the State of Nevada condemned a portion of the family property for highway use. Second Amended Complaint (Appendix E at 86a–87a).

The northwest corner of the parcel is physically separated from the remainder of the property by Dry Creek, a perennial stream. The Harvey Trust's predecessors reached the northwest corner by a bridge

spanning Dry Creek. During the construction of Interstate 580, NDOT removed that bridge. With the bridge gone and Dry Creek dividing the parcel, the northwest corner was left with no means of access other than a road over adjoining property that NDOT then owned (the Green Acres Parcel). Second Amended Complaint (Appendix E at 86a–87a). The Harvey Trust thereafter used that road—the Dirt Access Road—as its substitute access to the northwest corner from approximately 1987 forward. Second Amended Complaint (Appendix E at 87a).

NDOT did not merely tolerate that use; it acknowledged and relied upon it. In 2003, NDOT issued Sign Permit No. 4812 and a corresponding Sign Permit Inspection Report authorizing the billboard on the Harvey Trust’s parcel. The sign-permit materials identified the Dirt Access Road across the Green Acres Parcel as the means of access to the billboard site for installation and maintenance, and a map submitted with the application depicted that road as such. Sign Permit Application and Sign Permit Inspection Report (JA Vol. 2 at 435–437); Map Showing “Dirt Access Road” (JA Vol. 2 at 439); *see* Appendix G at 168a–173a (reproducing the permit, inspection report, and map). NDOT approved the permit with knowledge that construction and maintenance access ran across the Green Acres Parcel, which NDOT then owned. The Harvey Trust’s tenant has regularly traveled to the northwest corner over the Green Acres Parcel since the billboard was constructed, and the Harvey Trust has relied on NDOT’s allowance of that access. Second Amended Complaint (Appendix E at 74a).

In 2020, NDOT sold the Green Acres Parcel to Green Acres Storage Partners LLC. It did so without providing

actual notice to the Harvey Trust and without reserving any access easement for the Trust's benefit, even though NRS 408.533 authorizes NDOT to reserve "[e]asements of access to and from abutting land" and to consider whether a disposition would deny a property owner access. Second Amended Complaint (Appendix E at 84a–85a). Following the sale, Green Acres Storage Partners LLC erected a fence, eliminating the Trust's access to the northwest corner. Second Amended Complaint (Appendix E at 87a). The northwest corner was thereby rendered landlocked, unusable, and without value, including through lost storage and billboard-lease revenue and the loss of the ability to maintain the slope of the Dry Creek wash. Second Amended Complaint (Appendix E at 92a–93a); *see also* Second Amended Complaint, JA Vol. 4 at 848–852.

The district court dismissed the Second Amended Complaint under Nevada Rule of Civil Procedure 12(b) (5) for failure to state a claim for relief on June 12, 2024 (Appendix B). The Supreme Court of the State of Nevada affirmed on September 8, 2025, reasoning that because the Harvey Trust never owned the Green Acres Parcel and had not established a formal easement over it, it had no compensable interest and nothing was taken (Appendix A), and denied rehearing on February 6, 2026 (Appendix C).

I. The limitations argument is directed at a claim the Harvey Trust does not assert.

Respondent argues that the takings claim is time-barred because the bridge was removed in 1987 and any resulting claim expired no later than 1993. Br. in Opp. 4–6. The argument mistakes the taking alleged. Respondent concedes that, after 1987, "[a]ccess to Harvey

Trust’s property has never been cut off,” because NDOT furnished substitute access across the Green Acres Parcel for more than three decades. Br. in Opp. 6. The Second Amended Complaint alleges a taking effected not by the bridge removal but by NDOT’s 2020 sale of the Green Acres Parcel, which eliminated that substitute access and landlocked the northwest corner. Second Amended Complaint (Appendix E at 86a–88a). A federal takings claim accrues when the property is taken. *Knick v. Township of Scott*, 588 U.S. 180, 205, 139 S. Ct. 2162, 2179 (2019). No claim accrued in 1987, when access remained, and the claim ripened only when the sale severed all access. Respondent’s theory would have required suit before any taking occurred and would then treat the access NDOT itself supplied as the event that started the clock. The claim is in any event timely under any period that could apply, having accrued only upon the 2020 sale. More fundamentally, the limitations bar is not the ground of the decision under review.

The Nevada Supreme Court applied NRS 11.080 only to the Harvey Trust’s quiet-title claims and to a separate allegation that more land was taken during the 1987 construction. Appendix A at 6a–7a, 10a. It dismissed the access-based taking on a different ground entirely—that the Harvey Trust “has not pleaded facts sufficient to establish that it possessed an interest to be taken in the first place.” Appendix A at 10a. That property-interest holding is the federal question presented, and it furnishes no adequate and independent state ground for declining review.

II. Whether the northwest corner can be reached across Dry Creek is a disputed question of fact.

Respondent contends that the northwest corner is “not ‘landlocked’” because it remains part of the overall property, which “has access to and abuts the Huffaker Place cul-de-sac.” Br. in Opp. 7. That is a factual assertion, and it cannot be reconciled with the allegations that govern a motion to dismiss. The Second Amended Complaint alleges that a large and deep wash physically separates the northwest corner from the remainder of the parcel, and that the removal of the bridge across Dry Creek left the northwest corner reachable only over the Dirt Access Road on the Green Acres Parcel. Second Amended Complaint (Appendix E at 86a–87a). Under NRCP 12(b)(5), the court was required to accept those allegations as true, draw all inferences in the Harvey Trust’s favor, and dismiss only if no set of facts would entitle the Harvey Trust to relief. Whether the wash could instead be bridged—turning on its topography and the feasibility, lawfulness, and cost of a new crossing—cannot be resolved on the pleadings, and Respondent’s contrary assertion is not properly before any court at this stage. Taking the allegations as pleaded, the 2020 sale eliminated every feasible means of access to the northwest corner, and the question presented is therefore a legal one: whether the complete elimination of access to a parcel is a compensable taking notwithstanding the absence of a state-recognized easement over the land that supplied the access. Respondent’s effort to contest that factual premise supplies no reason to deny review; it confirms only that the courts below resolved the premise against the Harvey Trust in disregard of the pleading standard.

III. The Fifth Amendment does not permit a State to define away a compensable property interest.

Respondent’s principal submission is that the sale “Could Not Constitute a Taking Because Harvey Trust Never had a Property Interest in that Property,” and that whether the Harvey Trust held an easement “is squarely a matter of state law over which this Court need not make a determination.” Br. in Opp. 7, 13. Respondent relies on *Board of Regents of State Colleges v. Roth*, 408 U.S. 564, 577, 92 S. Ct. 2701, 33 L. Ed. 2d 548 (1972), which states that property interests are “defined by existing rules or understandings that stem from an independent source such as state law.” Br. in Opp. 8. *Roth* identifies state law as an independent source of property interests. It does not make state law the exclusive source, and it does not permit a State to avoid the Takings Clause by withholding recognition of the interest it has appropriated. This Court so held in *Tyler v. Hennepin County*, 598 U.S. 631, 143 S. Ct. 1369, 1372 (2023): although “state law is an important source of property rights, it cannot be the only one because otherwise a State could ‘sidestep the Takings Clause by disavowing traditional property interests’ in assets it wishes to appropriate,” quoting *Phillips v. Washington Legal Foundation*, 524 U.S. 156, 165–168, 118 S. Ct. 1925, 141 L. Ed. 2d 174 (1998). Respondent does not address *Tyler* or *Phillips*. Its position that Nevada’s refusal to recognize an easement ends the inquiry is the precise rule those decisions reject. Nevada cannot escape the Takings Clause by declining to recognize it when the State’s own sale extinguishes all access to a landowner’s parcel. “[A] physical taking occurs if the Government denies an owner all access to a property interest.” *Sacramento Grazing Ass’n v. United States*, 96 Fed. Cl. 175, 194 (2010) (citing *Foster v. United States*, 607 F.2d 943, 949–50, 221 Ct. Cl.

412 (Ct. Cl. 1979)). The rule extends to the elimination of practical access. *Midas Resources, Inc. v. United States*, 168 Fed. Cl. 385, 401 (2023) (government action that “cuts off or denies ‘all feasible routes’ of access” may be compensable), quoting *Laney v. United States*, 661 F.2d 145, 149, 228 Ct. Cl. 519 (Ct. Cl. 1981).

The Second Amended Complaint alleges that the sale eliminated every feasible means of access to the northwest corner, rendering it landlocked and valueless. Second Amended Complaint (Appendix E at 86a–88a, 92a–93a). Those allegations state a claim for a federal taking. That the Nevada Supreme Court reached a contrary result by confirms the need for review, because that reasoning permits a State to extinguish all access to private property and avoid compensation by characterizing the lost access as less than a state-recognized interest.

IV. The decision below cannot stand insofar as it conflicts with Federal Takings Clause precedents.

Respondent’s submission that the property-interest question “is only a matter of state law,” Br. in Opp. 15, misapprehends the relationship between state courts and federal law. When a state Supreme Court resolves a federal question in a manner that conflicts with the decisions of this Court, the state court’s judgment is invalid to the extent of the conflict. State courts, including state courts of last resort, are bound by the Supremacy Clause to enforce federal law, and they may not nullify a federal right or cause of action in service of state policy or state-law definitions. This Court is the final arbiter of federal law, and its decisions on federal questions bind every court, state and federal alike.

This Court has long made clear that federal law is as much the law of the several States as are the laws passed by their legislatures. Federal and state law “together form one system of jurisprudence, which constitutes the law of the land for the State; and the courts of the two jurisdictions are not foreign to each other, nor to be treated by each other as such, but as courts of the same country, having jurisdiction partly different and partly concurrent.” *Clafin v. Houseman*, 93 U.S. 130, 136–137, 23 L. Ed. 833 (1876); see *Minneapolis & St. Louis R. Co. v. Bombolis*, 241 U.S. 211, 222, 36 S. Ct. 595, 60 L. Ed. 961 (1916); The Federalist No. 82, p. 132 (E. Bourne ed. 1947, Book II) (A. Hamilton) (“[T]he inference seems to be conclusive, that the State courts would have a concurrent jurisdiction in all cases arising under the laws of the Union, where it was not expressly prohibited”).

Haywood v. Drown, 556 U.S. 729, 734–35, 129 S. Ct. 2108, 2114 (2009).

The Nevada Supreme Court did not merely decide a question of Nevada property law; in holding that the complete and permanent elimination of the Harvey Trust’s access worked no taking because state law would not recognize the lost access as a formal easement in neighboring property, it decided a federal question—the scope of the Fifth Amendment’s protection—and decided it in conflict with this Court’s precedents. To the extent the decision below rests on the contrary proposition, it cannot stand, and this Court’s review is warranted to

enforce the supremacy of federal law over the state-law characterization on which Respondent relies.

V. The dispute over NRS 408.533 does not reach the federal question.

Respondent argues that NRS 408.533 uses the permissive “may” and therefore creates no easement, and that *Roth and Malfitano v. County of Storey*, 133 Nev. 276, 396 P.3d 815 (2017), establish no protected interest. Br. in Opp. 13. That argument does not dispose of the Petition. The federal takings claim does not depend on NRS 408.533. The complete elimination of access to the northwest corner is a compensable physical taking whether or not the statute independently created a right to an easement. The statute is relevant only to confirm that Nevada law contemplates the reservation of “[e]asements of access to and from abutting land” to prevent the landlocking of neighboring parcels. That the Nevada Supreme Court treated any argument under NRS 408.533 as not properly raised, Appendix A at 10a n.1, is therefore beside the point: the Fifth Amendment question presented does not turn on the statute’s construction.

VI. A straightforward federal question is presented and was preserved.

Respondent concludes that the Harvey Trust “fails to raise an issue for this Court’s consideration” because the property-interest question “is only a matter of state law.” Br. in Opp. 15. That conclusion follows only if Respondent’s premise is correct, and it is not. Whether a State may eliminate all access to private property and

avoid just compensation by characterizing the lost access as less than a state-recognized property interest is a federal question—and an important one that warrants this Court’s resolution. Other state courts treat the loss of access as compensable taking. *Bacich v. Board of Control*, 23 Cal. 2d 343, 350 (1943); *Wellswood Columbia, LLC v. Town of Hebron*, 992 A.2d 1120, 1126 (Conn. 2010); *Heath v. Parker*, 30 P.3d 746, 750 (Colo. App. 2001). The Harvey Trust preserved the federal question at each stage below: in the Second Amended Complaint, filed February 28, 2024 (Appendix E at 90a, 92a–93a, 95a–96a); in the Appellant’s Opening Brief in the Supreme Court of the State of Nevada, filed November 29, 2024 (Appendix F at 119a–120a); and in the Appellant’s Petition for Rehearing in the Supreme Court of the State of Nevada, filed September 22, 2025 (Appendix G at 155a–157a, 164a).

CONCLUSION

The petition for a writ of certiorari should be granted.

Respectfully submitted,

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