25-299

No. _____

In the Supreme Court of the United States

SAM SILVERBERG,
Petitioner,

v.

DISTRICT OF COLUMBIA, ET AL.,
Respondents.

ON PETITION FOR WRIT OF CERTIORARI
TO THE UNITED STATES COURT OF APPEALS
FOR THE DISTRICT OF COLUMBIA CIRCUIT

PETITION FOR WRIT OF CERTIORARI

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Tenth day of July, MMXXV

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QUESTIONS PRESENTED

1. Whether the appellate court committed error by overturning *Hibbs* v. *Winn*, 542 U.S. 88 (2004) by holding that any constitutional claim arising directly from the assessment bars federal jurisdiction even when the claim does not negatively impact the flow of revenue to the general fund?

2. Whether the appellate court committed error by not finding that the defendant was collaterally estopped from asserting that the test for exclusive jurisdiction of constitutional claims was established in *Hibbs,* by virtue of their litigation in *Coleman* v. *Dist. of Columbia*, 70 F.Supp. 3d 58 (D.D.C. 2014)?

3. Whether the appellate court committed error by deciding the case without first resolving the issue of collateral estoppel, where the district court held that when a constitutional claim does not negatively impact the flow of revenue to the general fund, federal courts have jurisdiction? *Coleman* v. *Dist. of Columbia*, 70 F. Supp. 3d 58 (D.D.C. 2014)

PARTIES TO THE PROCEEDINGS

Petitioner, and plaintiff-appellant below is Sam Silverberg.

Respondents, and defendant-appellees below are the District of Columbia, Muriel Bowser, in her official capacity as mayor of the District of Columbia, Donald Sullivan, and Gerard Anderson.

RELATED PROCEEDINGS

United States District Court (D.D.C.):

Sam Silverberg v. *District of Columbia, et al.*, No. 1:23-cv-02851-TSC

United States Court of Appeals (D.C. Cir.):

Sam Silverberg v. *District of Columbia, et al.*, No. 24-7165

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OPINIONS BELOW

The D.C. Circuit's decisions are reproduced in the Appendix at App.1-4 to the petition and are unpublished. The District of Columbia's decisions are reproduced in the Appendix at App.5-10.

JURISDICTION

The D.C. Circuit's order was issued on April 14, 2025. This Court has jurisdiction under 28 U.S.C. 1254(1).

STATUTORY PROVISIONS INVOLVED

The constitutional provisions involved is the Fifth Amendment of the United States Constitution:

> No person shall be held to answer for a capital, or otherwise infamous crime, unless on a presentment or indictment of a Grand Jury, except in cases arising in the land or naval forces, or in the Militia, when in actual service in time of War or public danger; nor shall any person be subject for the same offence to be twice put in jeopardy of life or limb; nor shall be compelled in any criminal case to be a witness against himself, nor be deprived of life, liberty, or property, without due process of law; nor shall private property be taken for public use, without just compensation.

U.S.Const., Amend. V.

The statutory provisions involved in this case is 42 U.S.C. 1983:

> Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law, suit in equity, or other proper proceeding for redress, except that in any action brought against a judicial officer for an act or omission taken in such officer's judicial capacity, injunctive relief shall not be granted unless a declaratory decree was violated or declaratory relief was unavailable. For the purposes of this section, any Act of Congress applicable exclusively to the District of Columbia shall be considered to be a statute of the District of Columbia.

42 U.S.C. 1983.

REQUEST FOR SUMMARY REVERSAL

Silverberg requests that this Court summarily reverse the District of Columbia Circuit's ruling that all constitutional claims arising directly out of the assessment are shielded from federal jurisdiction. This ruling overrules *Hibbs* v. *Winn*, 542 U.S. 88 (2004). In *Hibbs,* federal jurisdiction is only barred when the constitutional claim has a negative effect on state revenue used for the general fund . In *Hibbs* a portion of the assessment was a tax credit, that did not negatively impact the revenues used for the general fund. The constitutional claim was based on the Establishment Clause. Therefore, the constitutional claim directly arises out of the tax assessment (the tax credit portion), thereby overruling Hibbs. The ruling would bar federal jurisdiction even when there is no change in the tax assessment, such as Silverberg's 5th Amendment claim for the appropriation of property rights. The vacancy tax portion of the assessment is a regulatory tax or fee to appropriate property rights, not to add revenue to the general fund.

STATEMENT OF THE CASE

Silverberg filed a 42 U.S.C. 1983 action due to the violations of his Fifth Amendment rights.

The case arose when the District of Columbia (heretofore known as "DC") determined that Silverberg's property at 6820 32nd St. NW Washington DC 20015 was vacant. Under "[t]he Fiscal Year 2011 Budget Support Act of 2010", DC

created a Class 3 property tax rate for residential vacant property. The property would be taxed at $5.00 per $100 of assessed value. As a result, Silverberg's property tax bill skyrocketed from $9,000.00 to $45,000.00. Due to the high tax bill, DC is effectively forcing Silverberg to sell or lease the property. Silverberg's property tax assessment consists of two portions. The first portion is the normal tax assessment used for the purpose of generating tax revenues to fund government operations. The second portion is a regulatory tax or a fine to appropriate property rights from property owners.

DC crafted the legislation for appropriating fundamental property rights from property owners by forcing them to sell or lease their property, by using the property tax system as the vehicle to appropriate their property rights. DC believed their appropriation would be shielded from federal jurisdiction by the use the property tax. The language "appropriating owners property rights" is not a challenge to DC's tax statute but describes the purpose of the statute.

REASONS FOR GRANTING THE PETITION

In *Cedar Point Nursery* v. *Hassid*, 594 U.S. ___ (2021) this Court stated that "the questioned to be answered is whether the government has physically taken property for itself or someone else—by whatever means—or has instead restricted a property owner's ability to use his own property. Whenever a regulation results in a physical appropriation of property, a per se taking has occurred, and Penn Central has no place." In *Cedar Point*, the government's physical appropriation of the right to

exclude others from the property owner was deemed to be a per se taking, requiring compensation. *Cedar Point* did hold that the taking clause of the 5th Amendment provides for compensation or injunctive relief for appropriating the property right to exclude others from the property.

Claim 1 (the only claim for relief presented) does not require the District Court to review a DC tax law or regulations for any constitutional violations. Claim 1 does not dispute the DC's assessment of the property tax or the imposition of the tax or requests a refund or dispute any DC tax law in this forum. The property was reclassified as being occupied and a tax refund was received.

I. District of Columbia and D.C. Circuit's Decisions

The D.C. Circuit decided to extend the exclusive jurisdiction to all constitutional claims that directly arise from the assessment, even for a purpose never contemplated by Congress. The appellate Court does not cite legal authority to extend the exclusive jurisdiction beyond the teaching of *Hibbs*.

The D.C. Circuit overruled *Hibbs*. *Hibbs* was directed to a third party who challenged Arizona law for allocating tax credits to a religious institution in violation of the Establishment Clause. The assessment included the benefit of the tax credit. The *Hibbs* court found that they had subject matter jurisdiction of the tax credit. The tax credit was included as a portion of the assessment. Therefore, the constitutional claim arises directly from the assessment.

The *Hibbs*, court explained:

We examine in this opinion both the scope of the term "assessment" as used in the TIA, and the question whether the Act was intended to insulate state tax laws from constitutional challenge in lower federal courts, even when the suit would have no negative impact on tax collection. [...]

[T]he Court has recognized, from the AIA's text, that the measure serves twin purposes: It responds to "the Government's need to assess and collect taxes as expeditiously as possible with a minimum of pre-enforcement judicial interference"; and it " require[s] that the legal right to the disputed sums be determined in a suit for refund,'"; [...] while §7421(a) "precludes suits to restrain the assessment or collection of taxes," the proscription does not apply when "plaintiffs seek not to restrain the Commissioner from collecting taxes".

[...] The [TIA] Act was designed expressly to restrict the jurisdiction of the district courts of the United States over suits relating to the collection of State taxes." S. Rep., p. 1. [...] In short, in enacting the TIA, Congress trained its attention on taxpayers who sought to avoid paying their tax bill by pursuing a challenge route other than the one specified by the taxing authority. Nowhere does the legislative history

> announce a sweeping congressional direction to prevent "federal-court interference with all aspects of state tax administration."

Hibbs v. *Winn*, 542 U.S. 88, *passim* (2004) (citations omitted)

Therefore, exclusive jurisdiction was usually limited to cases where a plaintiff was attempting to reduce their tax liability or to resolve a tax burden or a challenge to the collection of a tax.

In *Direct Marketing Association* v. *Brohl,* 575 U.S. 1 (2015), the court relied on the meaning of assessment as set forth in *Hibbs* v. *Winn*, 542 U.S. 88,100 (2004) to determine the existence of exclusive jurisdiction.

"In defining the terms of the TIA, we have looked to federal tax law as a guide. *Hibbs*, supra, at 102–105;" Justice Ginsburg in her concurring opinion stated "the Court has observed, Congress designed the Tax Injunction Act not "to prevent federal-court interference with all aspects of state tax administration," *Hibbs* v. *Winn*, 542 U.S. 88, 105 (2004) (internal quotation marks omitted), but more modestly to stop litigants from using federal courts to circumvent States' "pay without delay, then sue for a refund" regimes. See *id.*, at 104–105 ("[I]n enacting the [Tax Injunction Act], Congress trained its attention on taxpayers who sought to avoid paying their tax bill by pursuing a challenge route other than the one specified by the taxing authority."). This suit does not implicate that congressional objective. The *Direct Marketing Association* is not challenging its

own or anyone else's tax liability or tax collection responsibilities. And the claim is not one likely to be pursued in a state refund action.

Based on the above analysis the District Court or Appellate Court would have subject matter jurisdiction of the taking clause of 5th amendment requiring compensation for appropriating property rights from the plaintiff, especially when there is no challenge or interference with the collection of a DC tax. *Hibbs* points out that DC's exclusive jurisdiction cannot be cut loose from its state-revenue-protective moorings. *See, e.g., California* v. *Grace Brethren Church*, 457 U.S. 393 (1982), at 410

II. Collateral Estoppel

The District failed to inform the court that the issue of limiting federal jurisdiction in DC Tax disputes, where DC was asserting exclusive jurisdiction, was litigated in this circuit, *Coleman* v. *Dist. of Columbia*, 70 F. Supp. 3d 58 (D.D.C. 2014). Where the disputed law was the holding in *Hibbs* v. *Winn*, 542 U.S. 88, 104, (2004). Therefore, DC is estopped from claiming exclusive jurisdiction unless the constitutional claim negatively impacts the flow of revenue to the local governments.

Coleman points out that "Upon reviewing the Act's history, the Supreme Court concluded that "Congress trained its attention on taxpayers who sought to avoid paying their tax bill by pursuing a challenge route other than the one specified by the taxing authority. Nowhere does the legislative history announce a sweeping congressional direction to prevent federal-court interference with all aspects of

state tax administration." *Id.* at 104–05, 124 S.Ct. 2276 (quotation marks omitted).

CONCLUSION

This court should grant certiorari.

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Dated: July 10, 2025 *Attorney for Petitioner*