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In the  
Supreme Court of Georgia

No. S25G1439

Blue 42 Organics, LLC

v.

Georgia Department of Public Safety

On Writ of Certiorari from the Court of Appeals of Georgia

No. A25A0607

Argued: June 17, 2026 — Decided: September 9, 2026

PETERSON, Chief Justice.

This is a case about when the government has to pay for damaging private property.

“In our federal system, the National Government possesses only limited powers; the States and the people retain the remainder. The States have broad authority to enact legislation for the public good — what we have often called a ‘police power.’ The Federal Government, by contrast, has no such authority and can exercise only the powers granted to it, including the power to make all [l]aws which shall be necessary and proper for carrying into [e]xecution the enumerated powers.” *Bond v. United States*, 572 US 844, 854 (2014) (cleaned up). This “police power” of the State is among the broadest government powers known to our system of ordered liberty, and extends to the exercise of government power in aid of public health, safety, morality, and welfare. *Bramley v. State*, 187 Ga. 826, 833–36 (1939). Notwithstanding its name, the police power extends far beyond mere law enforcement activity.

The Court of Appeals held below that the State’s exercise

of the police power is categorically exempt from the Georgia Constitutional command that “private property shall not be taken or damaged for public purposes without just and adequate compensation being first paid.” Ga. Const. of 1983, Art. I, Sec. III, Par. I(a) (the “Just Compensation Clause”). Our precedent, the Georgia Constitution’s protections of private property, and a proper appreciation for the full scope of the police power compel us to reverse that holding.

In this case, Blue 42 Organics, LLC (“Blue 42”) asserted a claim for inverse condemnation against the Georgia Department of Public Safety (“DPS”) under the Just Compensation Clause after DPS damaged Blue 42’s private property during a drug interdiction operation. The trial court dismissed Blue 42’s complaint, concluding that DPS was exercising its “police powers” during the operation and, therefore, sovereign immunity barred Blue 42’s claim. The Court of Appeals affirmed that dismissal, concluding that the exercise of police power categorically precluded compensation under the Just Compensation Clause.

As explained further below, the “police power” is exceptionally broad and extends far beyond law enforcement activity. Nothing in the text or history of the Just Compensation Clause supports a categorical exemption for all exercises of the police power. There are two identified categories clearly delineated in our case law — abatement of nuisances and destruction of property in cases of urgent necessity — that have been described as an exercise of police power exempt from the requirement of just compensation. If there are any other categorical exemptions, DPS has not identified them in this case. Because DPS’s motion to dismiss was based only on the purported categorical police power exemption, which we reject here, we reverse the Court of Appeals.

## 1. *Background*

The trial court granted a motion to dismiss, which requires us to “accept as true all well-pled material allegations in the complaint and resolve any doubts in favor of the plaintiff.” *Williams v. DeKalb County*, 308 Ga. 265, 270 (2020) (cleaned up). Accepting Blue 42’s allegations as true, the record shows that Blue 42 is a licensed hemp grower and operates a hemp farm in Dahlonega that is properly registered with both the Georgia Department of Agriculture and United States Department of Agriculture. As a requirement of registration, Blue 42 logged the GPS coordinates of its operations. In July 2021, DPS, acting through the Governor’s Drug Suppression Task Force, conducted a drug-suppression exercise in the area of Blue 42’s hemp farm. During the operation, DPS flew helicopters and a fixed-wing aircraft at a low altitude, resulting in the destruction of two rows of Blue 42’s crops valued at about \$37,000. Blue 42 also claimed that its future renewals of leasing of land for grazing was jeopardized by DPS’s actions, because cattle on the land were harassed by the low flying aircraft.

Blue 42 sued DPS, asserting a claim for inverse condemnation in its amended complaint.<sup>1</sup> DPS moved to dismiss the suit on the basis of sovereign immunity, arguing that although sovereign immunity is waived for inverse condemnation claims, Blue 42 did not have a viable inverse condemnation claim because the alleged property damage occurred during the exercise of the State’s police powers. The trial court granted DPS’s motion to dismiss. Blue 42 appealed to the Court of Appeals, which affirmed the trial court’s dismissal of Blue 42’s complaint on the

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<sup>1</sup> Blue 42 also asserted a claim for attorney’s fees under OCGA § 13-6-11. That derivative claim rises or falls with the inverse condemnation claim. See *Ga. Dept. of Corrections v. Couch*, 295 Ga. 469, 474–475 (2014).

ground that the property damage was caused by DPS’s exercise of the State’s police power and was, therefore, categorically exempted from the Just Compensation Clause. See *Blue 42 Organics, LLC vs. Dept. of Pub. Safety*, 376 Ga. App. 135 (2025). We granted certiorari.

## 2. *Background of Sovereign Immunity, the Just Compensation Clause, and the Police Power*

This case involves the interplay between three longstanding principles of Georgia law — sovereign immunity; the State’s obligation to pay “just and adequate compensation” under the Just Compensation Clause found in Article I, Section III, Paragraph I(a) of the Georgia Constitution; and the State’s police power.

### (a) *Sovereign Immunity*

Sovereign immunity was a common law doctrine that has become constitutionally enshrined. See *Lathrop v. Deal*, 301 Ga. 408, 412–13, 418–23 (2017) (under the common law, the sovereign “could not, without its own express consent, be subjected to an action of any kind” (quotation marks omitted)). The relevant constitutional provision states that, except as otherwise provided in that paragraph, “sovereign immunity extends to the state and all of its departments and agencies” and “can only be waived by an Act of the General Assembly which specifically provides that sovereign immunity is thereby waived and the extent of such waiver.” Ga. Const. of 1983, Art. I, Sec. II, Par. IX(e). Although implied waivers of sovereign immunity are generally disfavored, a constitutional provision itself may waive sovereign immunity by necessary implication. See *Dept. of Transp. v. Mixon*, 312 Ga. 548, 550–51 (2021). And our precedent is clear that the Just Compensation Clause impliedly waives sovereign immunity in

inverse condemnation actions — that is, claims alleging the taking or damaging of private property for public purposes without first initiating formal eminent domain proceedings. See, e.g., *Mixon*, 312 Ga. at 550, 560–61; *Rabun County v. Mountain Creek Estates, LLC*, 280 Ga. 855, 856 (2006); *Columbia County v. Doolittle*, 270 Ga. 490, 491 (1999). This is true regardless of whether the damage is temporary or permanent. See also *Ga. Dept. of Transp. v. Edwards*, 267 Ga. 733, 737 (1997) (“The constitution does not distinguish between permanent and temporary damage [in requiring just compensation to be paid].” (quotation marks omitted)). So whether sovereign immunity bars Blue 42’s inverse condemnation claim here turns on whether the Just Compensation Clause properly applies.

(b) *The Just Compensation Clause*

Much as the constitutional principle of sovereign immunity came to us from the common law, so did the Just Compensation Clause. The Just Compensation Clause first appeared in a Georgia Constitution in 1861, see Ga. Const. of 1861, Art. I, Par. XXI. But even before its constitutional enshrinement in 1861, the doctrine of just compensation was long a part of Georgia law. See *Parham v. Justices of Inferior Ct. of Decatur County*, 9 Ga. 341, 348 (1851) (“The general doctrine, that private property cannot be taken for public use, without compensation, has been more than once held here.”). From our earliest days, this Court recognized that the doctrine of just compensation was a part of Georgia foundational law because it was a part of the English common law that we adopted nearly 250 years ago.<sup>2</sup> See, e.g., *Parham*, 9 Ga.

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<sup>2</sup> The 1784 adoption of the common law of England, as it existed on May 14, 1776, remains in force today, except to the extent it is displaced by our own constitutional or statutory law. *Lathrop*, 301 Ga. at 412 n.9.

at 349 (“It is not, therefore, necessary to go to the Federal Constitution for [the principle]. It came to us with the Common Law — it is part and parcel of our social polity — it is inherent in ours, as well as every other free government. At Common Law, the Legislature can compel the use of private property, but not arbitrarily. It treats with the citizen, as owner, for the purchase, and whilst he cannot withhold it upon offer of compensation, they cannot seize it without such tender.”). See also *Young v. Harrison*, 6 Ga. 130, 146 (1849) (“It is conceded that by the Common Law, as well as by the Constitution of the United States, private property cannot be taken for public use, without just compensation.”); 3 Joseph Story, *Commentaries on the Constitution of the United States* 661 (1833) (commenting that the Fifth Amendment was an “affirmance of a great doctrine, established by the common law for the protection of private property. It is founded in natural equity, and is laid down by jurists as a principle of universal law. Indeed, in a free government, almost all other rights would become utterly worthless, if the government possessed an uncontrollable power over the private fortune of every citizen.”); *Young v. McKenzie*, 3 Ga. 31, 44 (1847) (“[The federal Takings Clause, see US Const. Amend. V], which declares ‘private property shall not be taken for public use without just compensation,’ does not create or declare any *new principle of restriction*, either upon the legislation of the National or State government, but simply recognized the existence of a great common law principle, founded in natural justice, especially applicable to all republican governments, and which derived no additional force, as a *principle*, from being incorporated into the Constitution of the United States.”

(emphasis in original)).<sup>3</sup>

Although a few cases discuss the common law roots of the just compensation requirement, *Young* and *Parham* are particularly instructive in setting out fundamental law that forms the history and context of the Just Compensation Clause’s incorporation into the 1861 Constitution. *Young* noted that a Just Compensation Clause was not present in the controlling Georgia Constitution of the time but concluded that this “great fundamental principle” nevertheless had “universal application.” *Young*, 3 Ga. at 45. *Parham* expounded further, recognizing that the “sacredness of private property” should not be entrusted to the “uncertain virtue of those who govern,” and noted the general doctrine that private property cannot be taken for public use without compensation. *Parham*, 9 Ga. at 348 (emphasis omitted).

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<sup>3</sup> The State argues that *Young* and *Parham*’s understanding of the common law was incorrect because it was based on Sir William Blackstone’s Commentaries, and his views were not actually adopted by English courts. But we have long considered Blackstone to be the leading authority on the common law. See *Undisclosed LLC v. State*, 302 Ga. 418, 425 & n.8 (2017). And Blackstone is not the only authority we have relied upon to determine the common law on this point. See *Parham*, 9 Ga. at 349–50 (collecting cases and citing commentaries from Chancellor Kent and Judge Story); *Young*, 3 Ga. at 42–43 (also citing Magna Charta). Our expression of the common law in *Parham* is consistent with those of other courts around the same time. See, e.g., *Thompson v. Grand Gulf R.R. & Banking*, 3 Howard 240, 249–50 (Miss. 1839) (noting that Chancellor Kent cited many authorities in regard to the right of eminent domain and his conclusion — “the settled and fundamental doctrine is, that government has no right to take private property for public purposes without giving a just compensation” — was not a “new” concept or provision peculiar to that state’s constitution (emphasis omitted)). And, in any case, it is awfully late in the day to argue now that we have been wrong about the common law for the entire life of our Court: we decided *Young* in 1847 and *Parham* in 1851, and our understanding of the law as expressed in those cases formed the backdrop for the Just Compensation Clause.

*Parham* also recognized that there were certain circumstances in which private property might be taken for a public use without compensation (and without any provision of law for making compensation), but that these circumstances involved “urgent public necessity, which no law has anticipated, and which cannot await the action of the [l]egislature.” *Id.* at 348–49.

*Parham* explained that this “urgent public necessity” or “[e]xtreme necessity” rule had a “very narrow application” and was “an exception, indeed,” to the general just compensation rule that when “public necessity or utility requires the assumption of private property, it can only be done by act of the Legislature, and the Legislature must make provision for compensation. If it does not, the Courts may pronounce the law a nullity.” *Id.* at 349. *Parham* observed that “extreme necessity” cases involved emergencies, such as the need to destroy houses or take materials in order to build defenses to protect against invasions and the need to seize provisions for the sustenance of an army during a war. *Id.* at 349. *Parham* thus illustrates that from our earliest days, this Court recognized that just compensation was generally required when the government destroyed property for public use and that there was a narrow exception to this general rule when government destroyed private property in extreme or urgent situations.<sup>4</sup>

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<sup>4</sup> Statutes predating the 1861 Constitution reinforce the notion that the State had the power of eminent domain, and that it was understood that this power was not limitless. Provisions of the 1860 Code recognized the State’s power of eminent domain through legislation, a court’s authority to declare that legislation “inoperative” if the exercise of that right was a “pretext of ... necessity,” and the need to pay just compensation before exercising eminent domain “[e]xcept in cases of extreme necessity and great urgency.” Code of 1860 §§ 2201–04. These statutes are consistent with the common law *Parham* described as requiring compensation before the exercise of eminent domain.

In its earliest forms, the Just Compensation Clause applied to taking private property for “public use.” See Ga. Const. of 1861, Art. I, Par. XXI. (“In cases of necessity, private ways may be granted upon just compensation being first paid; and with this exception, private property shall not be taken except for public use; and then, only upon just compensation; such compensation, except in cases of pressing necessity, to be first provided and paid.”); Ga. Const. of 1865, Art. I, Par. XVII (“In cases of necessity, private ways may be granted upon just compensation being first paid, and with this exception private property shall not be taken, save for public use, and then only on just compensation to be first provided and paid, unless there be a pressing, unforeseen necessity; in which event the general assembly shall make early provision for such compensation.”).<sup>5</sup>

But in the 1877 Constitution, the provision was changed from “public use” to “public purposes,” and added that private property could also not be damaged without just compensation. See Ga. Const. of 1877, Art. I, Sec. III, Par. I (“In cases of necessity, private ways may be granted upon just compensation being first paid by the applicant. Private property shall not be taken, or damaged, for public purposes, without just and adequate compensation being first paid.”); Ga. Const. of 1945, Art. I, Sec. III, Par. I (same, except changing “cases” to “case”). Beginning in 1960, Georgians approved more significant textual changes to the Just Compensation Clause that limited the circumstances in which payment before taking or damaging is constitutionally required for the taking or damaging of private property for “public purposes.” See Ga. L. 1960, pp. 1225–26, § 1

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<sup>5</sup> The 1868 Constitution made no reference at all to “public use.” See Ga. Const. of 1868, Art. I, Sec. XX (“Private ways may be granted upon just compensation being paid by the applicant.”).

(proposing amendment); Ga. L. 1961, pp. 3636–37 (noting voter approval of amendment at November 1960 general election); Ga. Const. of 1976, Art. I, Sec. III, Par. I(1); Ga. Const. of 1983, Art. I, Sec. III, Par. I.<sup>6</sup> See also Maureen E. Brady, *The Damagings Clauses*, 104 Va. L. Rev. 341, 356–59 (2018) (noting that beginning in 1870, many states began amending their state constitutions to also add damaging clauses that were “meant to compensate for th[o]se government activities falling short of physical appropriations”).

Amid these changes, for its first century of existence, the clause had always provided that a government entity generally must pay just compensation *before* the taking or damaging of private property. See *Mixon*, 312 Ga. at 553–54 (reviewing how the Just Compensation Clause changed from its initial enshrinement in the 1861 Constitution to the operative 1983 Constitution). Even now, although the current Constitution provides certain limited circumstances in which the prepayment requirement does not apply, the general constitutional rule is still that compensation must be paid before the government takes or damages a person’s private property for a public purpose. See *id.* See also *Louisville & N.R. Co. v. Merchants’ & Farmers’ Bank*, 166 Ga. 310, 310 (1928) (although the legislature may authorize

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6 Although this case does not call on us to determine the scope of “public purposes” under the Just Compensation Clause or whether DPS’s activity fell within that scope, we note (without deciding) that this change in language from “public use” may suggest a broader meaning than the common law and the federal Takings Clause (US Const. Amend. V). See *Barrow v. Raffensperger*, 308 Ga. 660, 672 (2020) (“When constitutional language is substantively changed, we must give that change effect.”). The parties make no argument that this change narrowed or expanded the scope of the Just Compensation Clause or any of the exceptions recognized at common law.

a commercial railroad to occupy city streets, “[i]f the property of an abutting-land owner will be damaged by the laying and use of a track in the street, the railroad company must first pay or tender to such property owner just and adequate compensation for the damages consequential upon the construction of the track, and the uses to which it will be put” (quotation marks omitted)); *Athens Terminal Co. v. Athens Foundry & Mach. Works*, 129 Ga. 393, 399 (1907) (in a case involving public works, noting: “The fundamental law makes no distinction between damages resulting from the actual taking of the property, and damages consequential from the construction of a public work where the property was not actually taken. In either event payment or tender must generally precede construction of work.”); *South Carolina R.R. Co. v. Steiner*, 44 Ga. 546, 557 (1871) (even before the term “damaged” was added to the Just Compensation Clause in 1877, recognizing that “[a]ny injury to the property of an individual, which deprives the owner of the ordinary use of it, is equivalent to a taking, and entitles him to compensation” (quoting Thomas A. Cooley, *A Treatise on the Constitutional Limitations Which Rest Upon the Legislative Power of the States of the American Union* 544 (1868))).

(c) *The Police Power*

The precise boundaries of what constitutes the State’s police power are difficult to draw, but it is clear that this power is not specifically about law enforcement, as modern readers might otherwise assume. Instead, the police power generally refers to “the governing authority’s ability to legislate for the protection of the citizens’ lives, health, and property, and to preserve good order and public morals.” *Powell v. State*, 270 Ga. 327, 334 (1998). See also *Morris v. City of Columbus*, 102 Ga. 792, 798 (1898) (“[The general police power of the state] is universally conceded

to include everything essential to the public safety, health, and morals, and to justify the destruction or abatement, by summary proceedings, of whatever may be regarded as a public nuisance.” (quotation marks omitted)). Historically, legislative bodies have exercised police power in a wide range of contexts, including zoning restrictions, building standards, health regulations, nuisance abatement, and alcohol regulations. See generally *Powell*, 270 Ga. at 334 (listing examples); *Hayes v. Howell*, 251 Ga. 580, 585 (1983). As we noted at the outset, this power is among the broadest of government powers.

This police power has long been recognized in our case law. In the same year that we recognized the common law principle that private property could not be taken for public use without just compensation, see *Young*, 6 Ga. at 146, we also recognized the State’s exercise of police power as a matter of its legislative power. In *Green v. Mayor and Aldermen of Savannah*, 6 Ga. 1 (1849), we distinguished the State’s taking of private property for public use, which would require just compensation,<sup>7</sup> from “the police law that merely regulates the *manner* in which” the property is used “for the good of the public.” *Id.* at 13. We further explained that the State’s power to prescribe the manner in which an individual exercises his property rights “rests on the implied right and duty of the supreme power, to protect all, by statutory regulations; so, that, on the whole, the benefit of all is promoted.” *Id.* We also declared that the city, acting under the authority of certain acts of the General Assembly, had the power to declare certain activities a public nuisance (in that case, the growing of

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<sup>7</sup> *Green* also discussed that compensation is due only when the government actually appropriates private property for the “*permanent use*” of the public, *id.* at 12–13, but as discussed further herein, that narrower rule of just compensation no longer applies.

rice within the city limits) and abate the same, and noted that to hold otherwise, “so as to prevent its proving pernicious to the health and morals of the citizens, generally, ... would strike at the very foundation of all police regulations.” *Id.* at 13–14.

Although *Green* discussed an implied sovereign right to regulate private property, we later made clear in *Whitley v. State*, 134 Ga. 758 (1910), that the Constitution itself recognized this power, pointing to two specific constitutional provisions related to the State’s legislative power. *Id.* at 773. In the generalized article outlining the legislative branch and its powers, we identified the police power as being rooted in one provision providing that “[t]he General Assembly shall have power to make all laws and ordinances consistent with this constitution, and not repugnant to the constitution of the United States, which they shall deem necessary and proper for the welfare of the state.” *Id.* (quoting Ga. Const. of 1877, Art. III, Sec. VII, Par. XXII). We also observed that, in the article describing the General Assembly’s specific powers, the State’s police power was also reflected in a constitutional provision providing that “[t]he exercise of the police power of the State shall never be abridged, nor so construed as to permit corporations to conduct their business in such a manner as to infringe the equal rights of individuals, or the general well-being of the State.” *Id.* (quoting Ga. Const. of 1877, Art. IV, Sec. II, Par. II).

So it is plain that the police power is exceptionally broad. See *Rowland v. Morris*, 152 Ga. 842, 845 (1922). But it is not limitless. The police power “must be exercised in subordination to” the Georgia Constitution. *Glynn County Comm’rs v. Cate*, 183 Ga. 111, 113 (1936). And it “may not be resorted to as a cloak for the invasion of personal rights guaranteed by the various constitutions.” *Mayor, etc., of Savannah v. Savannah Distrib. Co.*,

202 Ga. 559, 574 (1947) (quotation marks omitted). See also *Blincoe v. State*, 231 Ga. 886, 887 (1974) (“[T]he state has no right, under the guise of exercising the police power, to invade the personal rights and liberty of the individual citizen by legislation which has no reasonable relation to a legitimate State purpose.”). The exercise of the State’s police power can be justified only “if it bears a substantial relation to the public health, safety, morality or general welfare.” *Barrett v. Hamby*, 235 Ga. 262, 265 (1975) (footnote omitted). See also *Beaty v. Richardson*, 164 Ga. 185, 186 (1927) (agreeing with contention that the “legislature must not, under the guise of police regulations, arbitrarily invade private property or personal rights, the test being found in the answer to the question whether the regulations made have some real and substantial relation to the public safety, health, or welfare, and whether that is the end sought. If not, the alleged police regulation is unreasonable and may be held void.”).

With these background principles in mind, we next turn to Blue 42’s claim that the State damaged its property during a drug-suppression operation without compensating Blue 42, either before or after.

3. *There is no categorical exemption from the Just Compensation Clause based on the State’s invocation of its police power.*

DPS argued to the courts below that Georgia law recognizes a broad rule that because Blue 42’s property was damaged or destroyed pursuant to DPS’s exercise of its police power, there is no compensable damage under the Just Compensation Clause. The trial court and Court of Appeals agreed with DPS. Specifically, the Court of Appeals held that no compensation was necessary, quoting authority that “the taking of private property for a public purpose without compensation has

no relevance to the exercise of the police power by the state or its political subdivisions.” *Blue 42 Organics*, 376 Ga. App. at 137–38 (quoting *Amica Mut. Ins. Co. v. Gwinnett County Police Dept.*, 319 Ga. App. 780, 781 (2013)). This holding essentially concludes that that the exercise of police power is categorically exempt from the requirements of the Just Compensation Clause. Our precedent does not support that conclusion.

Although the government is not required to pay for destroying or damaging private property when exercising the police power under certain circumstances, those circumstances are quite limited. There is not an expansive exemption merely because the government was exercising the police power. Indeed, given the exceptional breadth of the State’s police power, a rule exempting all exercise of that power from the Just Compensation Clause would pose serious danger to the private property rights our Constitution protects.

In concluding that DPS’s action were categorically exempt from the Just Compensation Clause, the Court of Appeals cited a line of cases stating that the Just Compensation Clause has no “relevance” to the exercise of the police power by the State or its political subdivisions. That statement was first enunciated by this Court in *Lewis v. DeKalb County*, 251 Ga. 100, 103 (1983), which relied exclusively on the Court of Appeals decision in *McCoy v. Sanders*, 113 Ga. App. 565 (1966) — precedent the Court of Appeals also relied on here. In *McCoy*, which involved damages to real property caused when police searched for a dead body, the Court of Appeals stated that when the government acts through its “police power,” it need not compensate a property owner for incidental damages to property. In reaching that seemingly broad conclusion, *McCoy* principally relied on two lines of precedent dealing with the destruction of property—urgent necessity and

abatement of nuisances. Neither line supports a categorical “police power” exception.

(a) *The first line of precedent relates to urgent necessity.*

The first line of cases relied on in *McCoy* is entirely unlike the routine law enforcement at issue in this case. In particular, *McCoy* noted: “At common law the State might destroy buildings in an effort to stop the spread of a conflagration under its police power, and the owner was entitled to no compensation.” 113 Ga. App. at 567–68. In support of that proposition, *McCoy* cited James Kent’s Commentaries on American Law, *Bowditch v. City of Boston*, 101 US 16 (1879), and *United States v. Caltex, Inc.*, 344 US 149 (1952). Neither of these authorities supports the idea that the State’s “police power” is categorically exempt from the Just Compensation Clause.

In his commentaries, James Kent noted that it was lawful to burn a house to the ground in order to contain the spread of a fire, or to tread upon private enclosure if a public highway was out of repair, and that in such cases of “urgent necessity,” the private property owner had no recourse in the law. 2 Kent’s Commentaries on American Law 338–39 (6th ed., 1848). Kent also discussed the right to just compensation in other cases but never discussed the police power at all. *Id.* So although Kent’s Commentaries provide support for the idea that there is no right to compensation in cases where private property is destroyed out of “urgent necessity,” it provides no support for the proposition that the generalized exercise of police power also precludes just compensation.

The other cases cited in *McCoy* do not support this notion, either. *Bowditch*, which held that a city was not liable to a property owner for the destruction of his property to prevent the

spread of fire, explained that common law rule as grounded in “imperative necessity.” 101 US at 18–19. *Caltex* was a war-time case holding that the Fifth Amendment to the United States Constitution did not require the federal government to make whole oil companies whose terminals were proactively destroyed on orders of the United States military at the time of the Japanese attack on Pearl Harbor. The Court invoked “[t]he necessities of the war” but also a broader rule, citing *Bowditch* and other cases: “[T]he common law had long recognized that in times of imminent peril — such as when fire threatened a whole community — the sovereign could, with immunity, destroy the property of a few that the property of many and the lives of many more could be saved.” *Caltex*, 344 US at 154 & n.6.

The rationale of this emergency-necessity line of cases is rooted in the urgent necessity of immediate destruction, not a categorical exemption for any use of the police power. Indeed, *McCoy* explicitly recognized that this exception was limited, stating: “[u]nder certain circumstances and conditions, a municipality may, acting under its police power for the general welfare of the public, take or use the property of a person or corporation without paying compensation therefor[.]” 113 Ga. App. at 567 (quoting *Atlantic Coast Line R. Co. v. Southern R. Co.*, 214 Ga. 178, 182 (1958)). This statement was consistent with principles laid down years before in *Parham*. 9 Ga. at 348–49 (recognizing certain circumstances in which private property might be taken for a public use without compensation, and that these circumstances involved “urgent public necessity” and were an exception to the general rule).

(b) *The second line of precedent relied on in McCoy is limited to the abatement of nuisances.*

The second line of cases on which *McCoy* relied involved

the destruction of property because the property was a nuisance, either in law or in fact. In particular, *McCoy* cited *Mayor & Aldermen of Savannah v. Mulligan*, 95 Ga. 323 (1895), where the Court held that the government’s destruction of bedding used by a person who had scarlet fever, a highly contagious disease, was proper, and the owner was not entitled to compensation because the evidence conclusively showed the property was a nuisance endangering public health. In so holding, *Mulligan* relied almost exclusively on this Court’s decision in *Dunbar v. City Council of Augusta*, 90 Ga. 390 (1892).

In *Dunbar*, the Court held that because the property owner did not dispute that the destroyed property was a nuisance, the City was authorized to abate the nuisance without having to pay the property owner compensation under the Just Compensation Clause. Although *Dunbar* referenced the notion of a government’s “police power,” stating that “[i]n abating nuisances, the public does not exercise the power of eminent domain, but the police power,” the Court did not explain what was meant by “the police power.” 90 Ga. at 395. *Dunbar*’s holding is not that the exercise of “police power” is categorically exempt from the Just Compensation Clause, and *Mulligan*, which this Court issued a mere three years after *Dunbar*, did not read *Dunbar* in this way. 95 Ga. 323. Importantly, rather than reading *Dunbar* as a categorical “police power” exemption from just compensation, we recognized in *Mulligan* that just compensation is not required when it is shown that the private property destroyed was actually a nuisance. We specifically stated:

In cases of emergency the municipal authorities, if authorized by their charter to abate nuisances, are not bound, before ordering the destruction of property as a nuisance, to wait until the fact that the property is a nuisance is judicially

determined. In such cases the destruction may be ordered without a preliminary condemnation. Unless, however, the property is first condemned as a nuisance by appropriate proceedings, *its destruction will be at the peril of the municipal authorities; and, when sued for its value, the burden is upon them of showing that it was in fact a nuisance, and that its destruction was really necessary to the public health and safety.*

*Mulligan*, 95 Ga. at 325 (citations omitted; emphasis added). See also *Americus v. Mitchell*, 79 Ga. 807, 808–09 (1888) (cited in *Mulligan* and stating that whenever city authorities abate a nuisance in a summary manner, as authorized by a city’s charter, they do so “at their own peril,” for the property owner had the right to sue and could recover damages if he proved that the damaged property was not a nuisance). *Mulligan* and *Mitchell* thus establish that a government could be sued for the destruction of property, and if the government claims it was abating a nuisance, it would have to pay compensation if the property was not actually a nuisance.

Of course, other cases teach us that sometimes certain property may be considered a nuisance as a matter of law, either because the legislature declared it to be so or because it was a nuisance at common law, such that the abatement of the nuisance through destruction of the property would not entitle the owner to compensation. See, e.g., *Mack v. Westbrook*, 148 Ga. 690, 692–93 (1919) (the State has the “police power” to justify the destruction or abatement “of whatever may be regarded as a public nuisance,” so the State’s seizure and destruction of vehicles used to transport intoxicating liquors did not entitle the property owner to compensation); *Crum v. Bray*, 121 Ga. 709, 710–12 (1905) (considering due process challenge to general welfare clause of city charter permitting city to pass any reasonable

ordinance for the health, safety, protection, comfort, and good government of the people of the city that were not in conflict with, among other things, the Constitution; the ordinance passed was lawful under that welfare clause; and, as a result, the city was permitted to impound an owner's hogs found "at large" on a public street because the "at large" hogs constituted a nuisance pursuant to the ordinance and common law).<sup>8</sup>

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<sup>8</sup> The State relies on *Crum* and *Pruden v. Love*, 67 Ga. 190, 194–95 (1881), both of which considered wrongful-abatement-of-nuisance claims only as due process challenges, to argue that these cases show that "everyone understood that an abuse of police power was not fodder for a Just Compensation Claim." But if that were so, we would have simply held in *Dunbar*, a case decided after *Pruden*, that the claim was not viable under the Just Compensation Clause rather than addressing the claim's merits. *Dunbar*, 90 Ga. at 395. In any case, the fact that the Just Compensation Claim was not considered in *Crum* or *Pruden* cannot be read as deciding that a wrongful abatement claim can never be brought under the Just Compensation Clause. See *Palmer v. State*, 282 Ga. 466, 468 (2007) ("Decisions of this Court do not stand for points that were neither raised by the parties nor actually decided in the resulting opinion, and ... questions which merely lurk in the record, neither brought to the attention of the court nor ruled upon, are not to be considered as having been so decided as to constitute precedents." (cleaned up)). Indeed, we have concluded that claims that the State exceeded its "police power" related to the regulation of property can state a due process claim *or* a claim under the Just Compensation Clause. See *Pope v. City of Atlanta*, 242 Ga. 331, 334 (1978). We acknowledge, however, that our opinions have not always been clear that eminent domain and due process are distinct constitutional inquiries, and have sometimes "converted inverse condemnation into a species of due process claim." *Diversified Holdings, LLP v. City of Suwanee*, 302 Ga. 597, 608 (2017). As we explain here, a due process claim in this context challenges the State's exercise of police power as not having a substantial relation to the public health, safety, morality, or general welfare. This is essentially a claim that the State lacked power to do the thing it did. A Just Compensation Clause claim in this context, on the other hand, does not challenge the exercise of the power but instead seeks just compensation for the damaging or taking of the property.

An important caveat about this police power to abate nuisances. Even though the State has the authority to declare activities a nuisance and destroy property to abate such nuisances, the invocation of that power is not itself conclusive, but is subject to judicial review. See *Mack*, 148 Ga. at 693 (“Since the legislature may not arbitrarily interfere with private business, or impose unusual or unnecessary restrictions upon lawful occupations, it follows that its determination as to what is a proper exercise of its police powers is not final or conclusive, but is subject to the supervision of the courts.” (quotation marks omitted)). See also *Cunningham v. Campbell*, 33 Ga. 625, 628 (1863) (providing that exercise of eminent domain power cannot be justified merely upon a “plea of *necessity*”).<sup>9</sup> To recap, although the State has the “police power” to declare certain activities to be a nuisance and destroy property to abate such nuisances, the mere exercise of that power does not itself immunize the State from paying for such destruction.

(c) *McCoy did not follow these two lines of authority.*

Despite these two lines of precedent from this Court that did not include a broad police power exemption, *McCoy* went awry in its application. In *McCoy*, state and county law enforcement officers drained a landowner’s pond in search of a body, and the landowner sought compensation for the damage resulting from that action. 113 Ga. App. at 565–66. Rather than determining whether the law enforcement actions fit within either of the two recognized exceptions to the Just Compensation Clause (it

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<sup>9</sup> Although the cases from around this time referred to the State’s authority to exercise the right of eminent domain in cases of “necessity,” we explained early on that “necessity” was not to be construed in a “strict sense of the term,” as it also included “cases of clear public utility.” *Cunningham*, 33 Ga. at 631–32.

probably would have satisfied the urgent necessity exception), the Court of Appeals mostly relied on cases from foreign jurisdictions that involved ordinary law enforcement actions to distill a broad proposition that “[i]n all of th[o]se cases the recovery was denied because the officers were acting under the police or governmental power.”<sup>10</sup> 113 Ga. App. at 570. The police power includes virtually everything the State can do, and such a broad exemption as articulated by *McCoy* — just compensation is precluded when state agents act under the police or governmental power — would effectively sweep away the Just Compensation Clause. We therefore overrule *McCoy* and similar decisions of the Court of Appeals<sup>11</sup> to the extent they held that the Just Compensation Clause does not apply simply because the government acted under the police power.

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<sup>10</sup> In its analysis, *McCoy* cited one Georgia case, *Rogers v. City of Atlanta*, 143 Ga. 153 (1915), but there, the plaintiff sought compensation for personal injuries, not the taking or damaging of private property. And while *McCoy* also stated that “there can be no liability against the government without its consent” for mistakes in exercising its inherent power to safeguard society by the prosecution of crimes, *McCoy*, 113 Ga. App. at 569 (quotation marks omitted), the Just Compensation Clause provides that consent.

<sup>11</sup> See, e.g., *Amica*, 319 Ga. App. at 780–82 (2013) (although the damage done appears to have been done during an emergency situation in which law enforcement officers were attempting to arrest a suspect, the Court of Appeals did not discuss an urgent necessity exception, and merely held the compensation was foreclosed because the property “was damaged pursuant to an exercise of police power”); *Bray v. Houston County*, 180 Ga. App. 166, 167–68 (1986) (after concluding that the Just Compensation Clause did not apply for damage done to a vehicle because, among other things, the vehicle was not being used for a government purpose at the time of the damage, the Court of Appeals alternatively held that the government was not required to pay compensation because law enforcement officers were acting under the police powers of the State).

(d) *Our decision in Lewis.*

In the light of this extensive precedent, this Court’s uncareful language in *Lewis* — that the Just Compensation Clause has no “relevance” to the exercise of the police power by the State or its political subdivisions — was an oversimplification of the principle that certain exercises of the police power do not require compensation under the Just Compensation Clause. And a review of the facts of that case suggest that *Lewis*’s broad language was unnecessary, as the emergency exception was likely applicable.

The *Lewis* plaintiffs claimed that they should be compensated for flooding resulting from alterations to a dam that were necessitated by a state of emergency related to the dam. 251 Ga. at 100, 102. After reviewing the actions of the county in altering the dam pursuant to a “state of emergency,” we concluded that the county “acted pursuant to its police powers,” and therefore the Just Compensation Clause did not apply. *Id.* at 102–03. Those circumstances showed the existence of an emergency requiring action that damaged private property, so the property owners were not entitled to compensation for damage to their property.

Nevertheless, we disapprove *Lewis*’s uncareful language. And to the extent that language can be read to hold that the Just Compensation Clause is categorically inapplicable to the exercise of the police power, stare decisis cannot preserve it given our ample pre-1983 precedent to the contrary, the absence of reasoning supporting any such holding (or any precedent besides a Court of Appeals decision we have now overruled), and indeed, the fact that such an “exception” would all but swallow the constitutional guarantee of just compensation for government

takings.<sup>12</sup>

4. *The Court of Appeals erred in affirming the dismissal of Blue 42's inverse condemnation claim.*

Limiting our review to the allegations in Blue 42's complaint and taking those as true, nothing in this procedural posture shows either an emergency or the government's efforts to abate a nuisance that would preclude relief under the Just Compensation Clause. Blue 42 is a licensed hemp grower and operates a hemp farm in Dahlonga that is properly registered with both the Georgia Department of Agriculture and United States Department of Agriculture. Although many legal activities might nevertheless become nuisances depending on the circumstances, see *Isley v. Little*, 217 Ga. 586, 586 (1962), there has been no development of the record to show that this is the case here. And even though certain activities may be prescribed as nuisances such that the government's abatement of the nuisance can be done in a summary manner, construing the allegations of the complaint in the light most favorable to Blue 42, there is no nuisance that would exempt the damage here from the Just Compensation Clause.

Similarly, DPS has not shown that Blue 42 cannot show any set of facts under which it would be entitled to relief. Although some law enforcement activities are conducted in response to emergencies, there are no allegations in Blue 42's

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<sup>12</sup> *Lewis* was decided after ratification of the 1983 Constitution and could not change the meaning baked into the Just Compensation Clause at the time of that ratification. See *Cobb County v. Floam*, 319 Ga. 89, 94 (2024) ("cases postdating the 1983 Constitution" could not change the meaning of a constitutional provision that had a fixed meaning based on "consistent and definitive precedent").

complaint that suggest an emergency. Further factual development may show that DPS was actually responding to an emergency such that the destruction of Blue 42's crops is noncompensable, but our review at this stage is limited to the allegations in the complaint.

As explained above, this Court's precedent does not support a broad, categorical police-power exemption from the Just Compensation Clause. And we decline any invitation to adopt such a rule here. First, although the use of police power is distinct from the use of eminent domain, the State's actions in regulating property under its police power, while broad, may exceed its authority under the police power such that it amounts to a taking or damaging under the Just Compensation Clause. See *Rabun County v. Mountain Creek Estates*, 280 Ga. 855, 856–57 (2006) (reviewing cases in which the government “took some affirmative action for public purposes causing a nuisance or trespass which, in turn, resulted in the diminished utility and functionality of a private owner's land”; “The diminished functionality and utility, in turn, interfered with the owner's use and enjoyment of the land. Therefore, a ‘taking’ for a public purpose occurred which supported a claim for inverse condemnation.”); *Pope v. City of Atlanta*, 242 Ga. 331, 334 (1978) (although many regulations that restrict the use of property, diminish its value, or cut off certain property rights do not give rise to just compensation, any “excessive regulation” may violate the Just Compensation Clause); *Steiner*, 44 Ga. at 557 (“Any injury to the property of an individual, which deprives the owner of the ordinary use of it, is equivalent to a taking, and entitles him to compensation.”

(cleaned up)).<sup>13</sup>

Second, the expansive rule suggested by DPS cannot be squared with our precedent described above that the applicability of a police power exemption depends on the particular circumstances of the case rather than resorting to sweeping rules. Whether an action by the State is within its police power is a separate question from whether an otherwise lawful action so frustrates property rights that compensation must be paid. See *State v. Old S. Amusements, Inc.*, 275 Ga. 274, 278–79 (2002) (“That the legislature enacted the Video Poker Act in the valid exercise of its police power does not end our inquiry, however, because plaintiffs assert the act violates the takings clause of our Constitution.”); *Lamar Advertising of South Ga., Inc. v. City of Albany*, 260 Ga. 46, 47 (1990) (even though Court did not “quarrel with the [city’s] proposition that a lawful regulation of signs is within the police power,” the regulation was void because it would “result in the destruction of a substantial part of a lawful enterprise” that “effect[ed] a taking of private property without just and adequate compensation”).

Finally, the police power is so broad that a rule that exempts all exercise of that power would dangerously undermine

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<sup>13</sup> These cases squarely reject the State’s argument here that the Just Compensation Clause is applicable only in cases of forced transactions or where the government permanently appropriates private property. See *Southern Railway Co. v. Atlanta Railway & Power Co.*, 111 Ga. 679, 692 (1900) (“Under the provisions of the constitution which requires compensation to be paid not only for property taken in the exercise of eminent domain, but also for property damaged thereby, this necessarily implies that for a direct invasion of any legal right of property pertaining to its ownership and enjoyment which results in material damage to the property the owner must first be compensated, whether it has been seized or not.”). See also *Edwards*, 267 Ga. at 737 (“The constitution does not distinguish between permanent and temporary damage ....”).

private property rights. Our precedent protecting private property rights in the face of government action reflects the paramount importance the Georgia Constitution places on property rights. See Ga. Const. of 1983, Art. I, Sec. I, Par. II (“Protection to person and property is the paramount duty of government and shall be impartial and complete.”). The Constitution’s promise to protect private property rights would be an empty one if the State is permitted to avoid paying just compensation for taking or damaging private property merely by invoking the police power. Almost everything that the State (and local governments by delegation) does is, in theory, for the public’s safety, health, and morals, including constructing roads, conducting law enforcement operations, and passing zoning ordinances. DPS offers no limiting principle that would prevent the State from asserting and a court from concluding that the taking or damaging of private property for a public purpose was really within the State’s police power, such that it would escape its responsibility to pay just compensation for such taking or damaging. Such a broad police power exemption would swallow the just compensation rule. In short, adopting a rule that the State’s mere invocation of the police power categorically exempts its actions from the Just Compensation Clause cannot be reconciled with the private property protections provided by our Constitution.

Again, it is important to recognize how the procedural posture of this case — appellate review of the grant of a motion to dismiss — affects our ultimate conclusion. A motion to dismiss can be granted only where it appears certain that the plaintiff would not be entitled to relief under any state of provable facts and the plaintiff could not possibly introduce evidence within the framework of the complaint sufficient to warrant the relief sought. See *Stendahl v. Cobb County*, 284 Ga. 525, 525 (2008).

Because the allegations show only that DPS was conducting a routine law enforcement exercise and DPS has not identified a categorical exemption from the requirements of the Just Compensation Clause that necessarily applies to such conduct, the Court of Appeals erred in affirming the dismissal of Blue 42's complaint. Nothing we say in this case should be understood as a determination whether DPS's actions actually fall within the two categories of exercises of police power that do not require just compensation, whether other exceptions to the Just Compensation Clause might exist and apply here, or the viability of Blue 42's inverse condemnation claim more generally. Because the only issue before the trial court and the Court of Appeals was DPS's categorical police power exemption argument, we reverse the Court of Appeals's judgment that affirmed the dismissal of Blue 42's complaint on the basis that the exercise of the police power categorically precluded relief.

*Judgment reversed. All the Justices concur, except Land, J., disqualified.*