No. 15-631

In The
Supreme Court of the United States

ARRIGONI ENTERPRISES, LLC,

Petitioner,

v.

TOWN OF DURHAM; DURHAM PLANNING AND ZONING COMMISSION; and DURHAM ZONING BOARD OF APPEALS,

Respondents.

On Petition For Writ Of Certiorari To The United States Court Of Appeals For The Second Circuit

MOTION FOR LEAVE TO FILE AND AMICUS CURIAE BRIEF OF INSTITUTE FOR JUSTICE SUPPORTING PETITIONER

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MOTION FOR LEAVE TO FILE *AMICUS CURIAE* BRIEF

The Institute for Justice moves for leave to file the attached *Amicus Curiae* Brief supporting Petitioner.

The Institute for Justice is a nonprofit, public interest law center committed to defending the essential foundations of a free society through securing greater protection for individual liberty and restoring constitutional limits on the power of government. Central to the mission of the Institute is strengthening the ability of individuals to control and transfer property and demonstrating that property rights are inextricably connected to other civil rights.

The core issue in this case is one that has caused confusion and injustice since this Court's decision in *Williamson County Reg. Plan. Commn. v. Hamilton Bank*, 473 U.S. 172 (1985). The issue is whether property owners claiming that government action has taken their property without just compensation in violation of the 5th Amendment to the U.S. Constitution have the right – like other constitutional claimants – to have their cases decided on the merits in federal courts. (See, e.g., *Bell v. Hood*, 327 U.S. 678, 681 [1946] [complaint seeking compensation for violation of 4th and 5th Amendments belongs in federal court if the plaintiff so chooses].) The decisions by lower state and federal courts have been confused and unjust. The only consistency about them is that they have deprived property owners of access to the

federal courts, while saying that they are applying a rule that will "ripen" the cases for federal court litigation. As those decisions have made clear, this Court is the only court that can clarify and make sense of this foundational question of federal court jurisdiction.

This issue is expanded upon in the attached brief.

Respectfully submitted,

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INTEREST OF *AMICUS CURIAE*

The undersigned *amicus curiae* files this brief in support of the Petitioner.[1] The Institute for Justice is a nonprofit, public interest law center committed to defending the essential foundations of a free society through securing greater protection for individual liberty and restoring constitutional limits on the power of government. Central to the mission of the Institute is strengthening the ability of individuals to control and transfer property and demonstrating that property rights are inextricably connected to other civil rights.

The Institute for Justice is also committed to the idea that the protection of individual rights requires an engaged federal judiciary that stands ready to defend those rights when they are infringed. For too long, however, the doors of federal courts have been all but closed to property owners seeking to vindicate their 5th Amendment rights. While, in every other area the Institute litigates, violation of a federal constitutional right entitles (and should entitle) a citizen to a federal constitutional remedy, property owners are routinely denied access to a federal forum.

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[1] Counsel for the *amicus curiae* authored this brief alone and no other person or entity other than the *amicus curiae*, its members or counsel have made a monetary contribution to the preparation or submission of this brief. The Petitioner consented to the filing of this brief, but the Respondents would not. Hence the brief is preceded by a motion. Counsel for the *amicus curiae* timely notified counsel for the parties that we intended to file this brief.

For three decades, the judiciary in this country has been hamstrung in its ability to properly adjudicate federal takings claims because of the decision in *Williamson County Reg. Plan. Commn. v. Hamilton Bank*, 473 U.S. 172 (1985). Lower federal courts have expressed frustration at their inability to adjudicate federal takings claims after *Williamson County*, with descriptions running the gamut from "odd" and "unfortunate" (*Fields v. Sarasota-Manatee Airport Auth.*, 953 F.2d 1299, 1306, 1307 [11th Cir. 1992]) to "draconian" (*Dodd v. Hood River County*, 59 F.3d 852, 861 [9th Cir. 1995]), with one concluding that the situation presents "a Catch-22 for takings plaintiffs" (*Santini v. Conn. Hazardous Waste Mgmt. Serv.*, 342 F.3d 118, 130 [2d Cir. 2003]), and another describing the plaintiff as having "already passed through procedural purgatory and wended its way to procedural hell" (*Front Royal etc. Corp. v. Town of Front Royal*, 135 F.3d 275, 283-84 [4th Cir. 1998]).[2]

Enough cases have been decided to make it clear that the law is every bit as confused and unjust as the commentators cited in footnote 2 describe. It is also clear that lower courts feel unable to solve the problem because the problem stems from this Court's

[2] A collection of the harshly critical analyses directed at *Williamson County* by commentators from all parts of the jurisprudential spectrum – even those who agree that this litigation belongs in state court – appears in Michael M. Berger & Gideon Kanner, *Shell Game! You Can't Get There From Here: Supreme Court Ripeness Jurisprudence in Takings Cases at Long Last Reaches the Self-Parody Stage*, 36 Urb. Law. 671, 702-03 (2004).

jurisprudence. How to bridge the "anomalous gap" in that jurisprudence as described by one Circuit Court "is for the Supreme Court to say, not us." (*Kottschade v. City of Rochester*, 319 F.3d 1038, 1041 [8th Cir.], *cert. den.* [2002].)

The Institute for Justice, sometimes on behalf of property owners and sometimes on behalf of itself as an organization, has regularly litigated about ripeness in property-rights cases and urges the Court to resolve the inequities in that doctrine.

SUMMARY OF ARGUMENT

1. It is time for the Court to reconsider *Williamson County*'s state court litigation prong, which requires state court confirmation that there is no state remedy for a governmental taking of property. Only then will a 5th Amendment claim be "ripe" for federal court litigation. The premise of that rule goes beyond the plain language and meaning of the 5th Amendment. A municipality's taking of private property without just compensation is complete *when* property is taken and compensation is not paid *by the government*. It does not require a judicial determination to complete, or ripen, the taking. And, if it did, there is no reason why such a determination must take place in state court.

2. This Court's cases since *Williamson County* have shown the need to disapprove the state court litigation requirement. ***First***, in *City of Chicago v.*

International College of Surgeons, 522 U.S. 156 (1997) this Court authorized a municipal defendant sued for a taking in state court to remove the case to federal court, even though removal is proper *only* if the plaintiff could have brought suit in federal court in the first place (28 U.S.C. § 1441[a]) – something *Williamson County* forbids. ***Second***, in *San Remo Hotel v. City & County of San Francisco*, 545 U.S. 323 (2005), the Court held that, once a case is brought and tried in state court – as commanded by *Williamson County* – issue preclusion would prevent prosecuting such a case in federal court. Four concurring Justices urged reconsideration of *Williamson County*. ***Third***, in *Horne v. United States Dept. of Agriculture*, 133 S. Ct. 2053, 2062, n. 6 (2013), the Court concluded that, once there has been a taking without payment, a proper constitutional claim has been presented, without the need for further "ripening."

3. No other constitutionally protected right is subjected to state court "ripening" as a condition precedent to suit in federal court. If the 5th Amendment's protection of property is truly no "poor relation" to the rest, as this Court proclaimed in *Dolan v. City of Tigard*, 512 U.S. 374, 392 (1994), then it is entitled to equal access to federal courts.

4. Both *Williamson County* and this case were brought under the Federal Civil Rights Act, 42 U.S.C. § 1983. Such cases are probably the worst cases in which to inject a state court litigation requirement. As this Court has held, the point of this legislation was to "interpose the federal courts between the

States and the people, as guardians of the people's federal rights." (*Mitchum v. Foster*, 407 U.S. 225, 243 [1972].)

ARGUMENT

I. *WILLIAMSON COUNTY* WAS WRONGLY DECIDED. LATER DECISIONS OF THIS COURT HAVE PLAINLY DEMONSTRATED THAT ERROR

The 5th Amendment's Just Compensation Clause prohibits government from taking private property for public use unless it pays just compensation. A violation of that provision occurs as soon as government action takes private property and the municipality fails or refuses to pay. There is nothing in either logic or language to require state court certification of non-payment before the taking is complete.

A. *Williamson County* is Fatally Flawed

Here is *Williamson County*'s flaw: it held that the taking was not complete until compensation was denied not just by the taking entity, but also by the state courts.

Williamson County quite properly began its analysis with the words of the 5th Amendment, noting that the constitutional provision "does not proscribe the taking of property; it proscribes taking without just compensation." (473 U.S. at 194.) The problem

arises because the Court then blurred the distinction between acts of the agency that actually committed the taking and the State that may or may not have provided compensation through its judiciary. (473 U.S. at 195-96.)

But the *state* is not involved in 42 U.S.C. § 1983 cases. States and their officials cannot be sued under Section 1983 (*Will v. Michigan Dept. of Police*, 491 U.S. 58 [1989]), nor (with very narrow exceptions [*Nevada Dept. of Human Resources v. Hibbs*, 538 U.S. 721 (2003)]) can they be brought into federal court at all against their will (U.S. Const., 11th Amend.). The real issue in cases like this is whether the local entity – like the Town of Durham – is alleged to have taken private property for public use and failed to pay for it. If so, the question whether the town can be *compelled* to pay lies at the heart of litigation in either state or federal court.

The crux of the problem with *Williamson County* is that it *merged the state legal system with the local agency defendant* and disregarded the plain words of the Constitution. Nothing in the 5th Amendment requires multiple litigation or state court deference. It does not say " . . . nor shall private property be taken for public use without just compensation *as finally determined by unsuccessfully suing a municipality in state court*."

The issue is not whether a state's judiciary has countenanced the constitutional violation, but whether the municipal defendant has committed

it. 42 U.S.C. § 1983 forbids any person, including municipalities (*Monell v. Dept. of Social Services*, 436 U.S. 658, 690 [1978]), acting under color of state law from violating rights secured by federal law. The gravamen of a 5th Amendment claim is a taking of property[3] and non-payment by the taker. When a municipality – like Durham – conscripts private property without any pretext of compensation, it violates the 5th Amendment. The presence or absence of a state remedy has no bearing on whether the malefactor did the deed.

Two years after *Williamson County*, the Court understood this, describing *Williamson County* as holding that "an illegitimate taking might not occur *until the government* ***refuses*** *to pay*" (*First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304, 320, n. 10 [1987]; emphasis added), without any reference to whether a state court had refused to *order* payment. In any event, if a municipality refuses to provide compensation as required by the U.S. Constitution and recourse to the courts must be had, there is no reason why such recourse should – let alone must – be had only in *state* courts when the *federal* constitution is being violated.

Deferring to state courts is tantamount to granting states a veto over access to federal court, making

[3] As explained in *U.S. v. General Motors Corp.*, 323 U.S. 373, 378 (1945), it is the deprivation of the owner that constitutes the compensable taking.

them *de facto* federal court gatekeepers. The Court has repeatedly concluded that "Congress surely did not intend to assign to state courts and legislatures a conclusive role in the formative function of defining and characterizing the essential elements of a federal cause of action." (*Felder v. Casey*, 487 U.S. 131, 144 [1988], quoting *Wilson v. Garcia*, 471 U.S. 261, 269 [1985].)

Mandating suit in state court imports into the 5th Amendment a remedial requirement when the just compensation language is a limitation on government's power, not an invitation to sue for payment. The Just Compensation Clause is self-executing. (*First English*, 482 U.S. at 315.)

If nothing else, any required suit for payment is contrary to Congressional policy established in 1970 in the Uniform Relocation Assistance and Real Property Acquisition Policies Act, which provides that the old days of grabbing property first and then saying "sue me" to the aggrieved owner are over. That Act makes it illegal for government agencies to make it necessary for property owners to sue for their just compensation.[4] Rather, the duty is the government's

[4] The Act provides succinctly, "No Federal agency head shall intentionally make it necessary for an owner to institute legal proceedings to prove the fact of the taking of his real property." (42 U.S.C. § 4651[8].) To make this a truly "uniform" law, as its title advertised, the policies in Section 4651 were made applicable to the states – by directing that federal funds could not be spent on state projects unless the state agreed to comply with these policies. (42 U.S.C. § 4655.)

to acquire whatever property interests are needed for the public good, either by negotiation (42 U.S.C. § 4651[1]) or, failing that, condemnation (42 U.S.C. § 4651[8]).

In any event, if suit is required to demonstrate the actuality of a 5th Amendment violation, there is nothing in the 5th Amendment directing that the *only* place to seek that determination is in *state* court. As state and federal courts have concurrent jurisdiction to decide constitutional claims, the choice of forum, as in other cases, should belong in the first instance to the plaintiff. (*Bell v. Hood*, 327 U.S. 678, 681 [1946].)

There is no need to sue in state court merely to confirm the non-payment of just compensation. The non-payment is obvious; it is the reason for the suit. Had there been payment, there would be no litigation. This can be seen in any regulatory taking case. In *City of Monterey v. Del Monte Dunes at Monterey, Ltd*., 526 U.S. 687 (1999), for example, the taking occurred in 1986, the case was furiously litigated, through two appeals to the 9th Circuit and one trip to this Court. That process consumed 13 years. At no time – even after a trial on the merits resulted in a compensatory judgment – did the city volunteer to pay anything. Suit was not necessary to determine the lack of compensation, or the city's lack of interest in paying.

Nor is a state suit needed to inform the defendant of the problem. Given the complexity of today's land use procedures – usually requiring years of

effort and endless public hearings before action is taken – any agency that is not comatose is well aware by the end of the process that the property owner claims the city action violates the 5th Amendment. Durham was not in doubt about that claim. It simply chose not to honor it. Imposing on Arrigoni (not to mention the time of the state courts) merely to confirm that obvious fact serves no legitimate purpose.

With respect, *Williamson County* erroneously construed the 5th Amendment to require a wasteful detour through state courts as a precursor to federal court litigation of a core federal constitutional issue. As shown below, it is even worse. Lower court efforts to grapple with this rule, attempting to apply it while also giving deference to general rules of preclusion, have created only chaos. It is time for this Court to acknowledge the original error and overrule the state court ripening requirement.

B. This Court's More Recent Cases Are Incompatible with *Williamson County*

This Court's post-*Williamson County* cases cannot be reconciled with it. *Williamson County*'s rule is that takings claims (whether directly under the Constitution or via 42 U.S.C. § 1983) must first be brought (and lost) in state court in order to render them ripe and viable in federal court.

But this Court has repeatedly held to the contrary, albeit without directly noting the issue thus created with *Williamson County*.

First, in *City of Chicago v. International College of Surgeons*, 522 U.S. 156 (1997) this Court authorized a municipal defendant sued for a taking in state court to remove the case to federal court. But removal is proper *only* if the *plaintiff* could have brought suit in federal court in the first place. (28 U.S.C. § 1441[a].) Under *Williamson County*, however, the plaintiff could not have filed suit initially in federal court. Such a suit would have been dismissed, with the lower courts relying on *Williamson County.* Acknowledging that the juxtaposition of *Williamson County* and *College of Surgeons* was "anomalous," the Eighth Circuit Court of Appeals concluded that how to resolve that conundrum "is for the Supreme Court to say, not us." (*Kottschade*, 319 F.3d at 1041.)

Second, in *San Remo Hotel v. City & County of San Francisco*, 545 U.S. 323 (2005), the Court held that, once a case is brought and tried in state court – as commanded by *Williamson County* – issue preclusion would prevent prosecuting such a case in federal court. Thus, state court litigation does not *ripen* a 5th Amendment claim, it *ends* it. The rationale for state court litigation has been undermined by *San Remo*.

Third, in *Horne v. United States Dept. of Agriculture*, 133 S. Ct. 2053, 2062, n. 6 (2013), the Court concluded that, once there has been a taking without payment, a proper constitutional claim has arisen. This undermines another key element of *Williamson County*, i.e., the idea that mere non-payment is not enough to ripen 5th Amendment litigation. In addition, there must be a holding by a state court that

compensation is not required. *Horne* is contrary to this *Williamson County* holding.

In these three post-*Williamson County* opinions, the Court has eliminated any jurisprudential basis for continuing to hew to that plainly outmoded precedent.

It is time, as the late Chief Justice and three others proclaimed in *San Remo*, for the Court to reconsider *Williamson County* and remove it from the precedential rolls. (545 U.S. at 348-52 [Rehnquist, C.J., concurring, joined by O'Connor, Kennedy, and Thomas, JJ.].)

II. NO OTHER CONSTITUTIONALLY PROTECTED RIGHTS ARE SHUNTED TO STATE COURTS FOR "RIPENING"

Property rights are the only constitutional rights subjected to a *Williamson County*-like ripening. This Court's cases dealing with other rights make this plain.

Just as the Constitution forbids taking property, but only without just compensation, so the Constitution forbids the deprivation of life and liberty – but only if done without due process of law: " . . . nor shall any State deprive any person of life, liberty, or property, without due process of law. . . ." (U.S. Const., 14th Amend.) And yet, plaintiffs complaining about deprivations of life or liberty without due process of law are not told they must first sue in state courts to

determine whether relief can be had there, as a precondition to seeking redress in federal court. Quite the contrary. Their suits take place in federal court; the validity of the defendant's actions under state law, and the availability of state remedies is irrelevant. (See, e.g., *Monroe v. Pape*, 365 U.S. 167 [1961] [police brutality case not required to be preceded by state tort suit for assault and battery]; *Felder v. Casey*, 487 U.S. 131, 148 [1988] [Section 1983 suits are enforceable in federal court "in the first instance"]; cf. *Screws v. U.S.*, 325 U.S. 91, 108 [1945].)[5]

If, as *Williamson County* said, the federal violation is not ripe until a *state court* verifies that state law provides no remedy, then *all* Section 1983 litigation would have to begin in state courts. In the words of the leading treatise, "If there is a reason why free speech cases are heard by federal judges with alacrity and property rights cases receive the treatment indicated above [i.e., diversion to state courts], it is not readily discernible from the Constitution." (Steven J. Eagle, Regulatory Takings 1070 [2d ed. 2001].)

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[5] The lone exception is habeas corpus, where all issues (state and federal) must be raised in state court first. (28 U.S.C. § 2254[b].) However, once done, a habeas petitioner is not subjected to res judicata and full faith and credit barriers upon arriving in federal court. The issues may be argued afresh. (See, e.g., *Wainwright v. Sykes*, 433 U.S. 72, 80 [1977].)

That property owners have been singled out is clear.[6] As one commentator concluded, "[t]he state compensation portion of [*Williamson County*] finds no parallel in the ripeness cases from other areas of the law."[7]

No parallel, indeed. The settled rule in other areas of substantive litigation under 42 U.S.C. § 1983 is that the federal forum is available at the plaintiff's demand, regardless of alternative remedies under state law:

> "It is no answer that the State has a law which if enforced would give relief. The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked." (*Monroe*, 365 U.S. at 183.)

Paradoxically, federal court protection is routinely provided in *some* land use cases – but only those involving aspects of the Bill of Rights *other*

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[6] See, e.g., Daniel R. Mandelker, Land Use Law, § 2.24 at 2-32 (5th ed. 2003) ["The Supreme Court has adopted a special set of ripeness rules to determine whether federal courts can hear land use cases."]; John Delaney & Duane Desiderio, *Who Will Clean Up The "Ripeness Mess"? A Call For Reform So Takings Plaintiffs Can Enter The Federal Courthouse*, 31 Urb. Law. 195, 196 (1999) ["the ripeness and abstention doctrines have uniquely denied property owners, unlike the bearers of other constitutional rights, access to the federal courts on their federal claims"].

[7] Gregory M. Stein, *Regulatory Takings and Ripeness in the Federal Courts*, 48 Vand. L. Rev. 1, 23 (1995).

than the 5th Amendment's Just Compensation Clause. Federal court 1st Amendment cases abound, for example, in which the validity of local land use ordinances regulating or zoning for (or against) sexually explicit work has been challenged.[8] There is no requirement of first presenting the issues to state courts, even though they implicate the same zoning policies and land use ordinances as do other land use cases. Cases are thus decided in federal court, based on "local community standards," without initial state court suits. Similarly, whether an artistic or literary work is obscene under the 1st Amendment is determined by "contemporary community standards" and "applicable state law."[9] But state court judges do not have a monopoly on measuring the works against those local standards.

Nor have federal judges shown any hesitation to embroil themselves in local issues invoking the kind of neighborhood and family values typically involved in land use cases. In a celebrated zoning case, this Court concluded that:

> "[a] quiet place where yards are wide, people are few, and motor vehicles restricted are legitimate guidelines in a land use project addressed to family needs. . . . It is ample to lay out zones where family values, youth values, and the blessings of quiet seclusion and

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[8] E.g., *City of Renton v. Playtime Theatres, Inc.*, 475 U.S. 41 (1986); *Young v. American Mini Theatres*, 427 U.S. 50 (1976).

[9] *Miller v. California*, 413 U.S. 15, 24 (1973).

> clean air make the area a sanctuary for people." (*Village of Belle Terre v. Boraas*, 416 U.S. 1, 9 [1974].)

The Court of Appeals in that case had "start[ed] by examin[ing]" the zoning ordinance with reference to "the interest of the local community in the protection and maintenance of the prevailing traditional family pattern. . . ." (*Boraas v. Village of Belle Terre*, 476 F.2d 806, 815 [2d Cir. 1973].) If it is acceptable for a federal court to examine such intensely local and personal issues in the context of disapproving a proposed development planning pattern, how does it become unacceptable when a landowner wants to challenge regulatory restrictions on constitutional grounds?

First Amendment cases dealing with the land use aspects of establishment of religion are also litigated in federal courts in the first instance.[10]

Moreover, at the behest of aggrieved citizens, federal courts have involved themselves in the local intricacies of city budget policy,[11] county law enforcement policy,[12] municipal policy governing the use of

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[10] E.g., *Town of Greece v. Galloway*, 134 S. Ct. 1811 (2014); *City of Boerne v. Flores*, 521 U.S. 507 (1997); *Larkin v. Grendel's Den*, 459 U.S. 116 (1982); *First Assembly of God v. Collier County*, 20 F.3d 419 (11th Cir. 1994).

[11] *Berkley v. Common Council*, 63 F.3d 295 (4th Cir. 1995) (*en banc*).

[12] *Turner v. Upton County*, 915 F.2d 133 (5th Cir. 1990).

force during arrests,[13] county road acquisition policy,[14] municipal employment policy,[15] city medical care policy,[16] random drug testing of students,[17] school district sexual abuse policy,[18] police department sexual harassment policy,[19] and even the question whether "extortion of outsiders, businessmen, or developers" was town policy.[20] As this Court itself has noted, federal courts routinely review issues involving exercise of a state's sovereign prerogative, including the power to regulate fishing in its waters, its power to regulate intrastate trucking rates, a city's power to issue bonds without a referendum, and a host of others.[21]

Many of the cited cases deal with parallel features of the Bill of Rights, notably the Due Process Clause, routinely protected in federal court through

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[13] *Beck v. City of Pittsburgh*, 89 F.3d 966 (3d Cir. 1996), *cert. den.* 117 S. Ct. 1086 (1997).

[14] *Hammond v. County of Madera*, 859 F.2d 797 (9th Cir. 1988).

[15] *Richardson v. Leeds Police Dept.*, 71 F.3d 801 (11th Cir. 1995).

[16] *Simmons v. City of Philadelphia*, 947 F.2d 1042 (3d Cir. 1991).

[17] *Board of Education v. Earls*, 536 U.S. 822 (2002).

[18] *Gonzalez v. Ysleta Ind. School Dist.*, 996 F.2d 745 (5th Cir. 1993).

[19] *Gares v. Willingboro Twp.*, 90 F.3d 720 (3d Cir. 1996).

[20] *Roma Constr. Co. v. aRusso*, 96 F.3d 566 (1st Cir. 1996).

[21] *County of Allegheny v. Frank Mashuda Co.*, 360 U.S. 185, 191-92 (1959) [collecting cases] [retaining federal court jurisdiction over a state eminent domain case].

42 U.S.C. § 1983 – even against unconstitutional land use regulations. All sorts of local governmental issues are litigated in federal courts every day. And they involve all aspects of the Bill of Rights – except the 5th Amendment's Just Compensation Clause.

> "For years, federal lawsuits telling state and local governments how to run their hospitals, jails, police forces, and mental institutions have been accepted as a matter of course."[22]

There is nothing so special about land use cases as to insulate them from federal court review.

III. THE WHOLE POINT OF 42 U.S.C. § 1983 WAS TO PROVIDE FEDERAL COURTS FOR THE PROTECTION OF FEDERAL RIGHTS

As this Court has repeatedly stressed, a § 1983 case is a "species of tort liability" (*Heck v. Humphrey*, 512 U.S. 477, 483 [1994]), specifically, a statutorily created "constitutional tort" (*Jefferson v. City of Tarrant*, 522 U.S. 75, 79 [1997]) that sweeps within its ambit all manner of governmental actions that defy Bill of Rights protections. Properly so. Section 1983 was intended to provide "a uniquely federal remedy" (*Mitchum v. Foster*, 407 U.S. 225, 239 [1972]) with

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[22] Peter A. Buchsbaum, *Should Land Use Be Different? Reflections on* Williamson County Regional Planning Board v. Hamilton Bank, in Taking Sides on Takings Issues, ch. 20, p. 472 (ABA 2002; Thomas E. Roberts, ed.).

"broad and sweeping protection" (*Lynch v. Household Fin. Corp.*, 405 U.S. 538, 543 [1972] [quoting with approval]) "read against the background of tort liability that makes a man responsible for the natural consequences of his actions" (*Monroe v. Pape*, 365 U.S. 167, 187 [1961], overruled in part, to expand government liability, in *Monell*, 436 U.S. 658) so that individuals in a wide variety of factual situations are able to obtain a *federal* remedy when their *federally* protected rights are abridged (*Burnett v. Grattan*, 468 U.S. 42, 50, 55 [1984]).

While read against the general common law tort background, "[t]he coverage of the statute [§ 1983] is . . . broader" (*Kalina v. Fletcher*, 522 U.S. 118 [1997]), and must be broadly and liberally construed to achieve its goals (*Golden State Transit Corp. v. City of Los Angeles*, 493 U.S. 103, 105 [1989]; *Lake Country Estates v. Tahoe Reg. Plan. Agency*, 440 U.S. 391, 399-400 [1979]).

"[T]he central purpose of the Reconstruction-Era laws is to provide compensatory relief to those deprived of their federal rights by state actors" (*Felder v. Casey*, 487 U.S. 131, 141 [1988]) by "interpos[ing] the federal courts between the States and the people, as guardians of the people's federal rights" (*Mitchum*, 407 U.S. at 243). *Williamson County*'s state court litigation mandate inverted this basic building block of 42 U.S.C. § 1983: it interposed state courts to

shield municipalities from federal accountability. It is time for this Court to end that practice.

CONCLUSION

Precedents are not cast away lightly. However, when scholars have been sharply critical of decisions,[23] when application of a precedent has produced a rule that "stands only as a trap for the unwary,"[24] when necessary to clarify the implications of earlier decisions,[25] when decisions of the Court are "if not directly . . . [conflicting,] are so in principle,"[26] or when "the answer suggested by [the Court's] prior opinions is not free of ambiguity,"[27] the Court has reviewed its earlier decisions and corrected its own errors. Each of those factors applies to *Williamson County*.

[23] *Cont'l T.V., Inc. v. GTE Sylvania, Inc.*, 433 U.S. 36, 48 (1977).

[24] *Complete Auto Transit, Inc. v. Brady*, 430 U.S. 274, 279 (1977).

[25] *SEC v. United Benefit Life Ins. Co.*, 387 U.S. 202, 207 (1967).

[26] *Funk v. U.S.*, 290 U.S. 371, 374 (1933).

[27] *McDaniel v. Sanchez*, 452 U.S. 130, 136 (1981).

Certiorari should be granted.

Respectfully submitted,

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