Nos. 18-1159(L), 18-1165, 18-1175, 18-1181, 18-1187, 18-1242, & 18-1300 (Consolidated)

In the United States Court of Appeals for the Fourth Circuit

MOUNTAIN VALLEY PIPELINE, LLC,

Plaintiff-Appellee,

vs.

6.56 ACRES OF LAND,
OWNED BY SANDRA TOWNES POWELL, *et al.*,

Defendants-Appellants.

APPEAL FROM THE UNITED STATES DISTRICT COURTS FOR THE WESTERN DISTRICT OF VIRGINIA, AT ROANOKE AND THE NORTHERN AND SOUTHERN DISTRICTS OF WEST VIRGINIA

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE OF OWNERS' COUNSEL OF AMERICA IN SUPPORT OF APPELLANTS' MOTION FOR REHEARING AND REHEARING EN BANC

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UNITED STATES COURT OF APPEALS FOR THE FOURTH CIRCUIT
DISCLOSURE OF CORPORATE AFFILIATIONS AND OTHER INTERESTS

Disclosures must be filed on behalf of all parties to a civil, agency, bankruptcy or mandamus case, except that a disclosure statement is **not** required from the United States, from an indigent party, or from a state or local government in a pro se case. In mandamus cases arising from a civil or bankruptcy action, all parties to the action in the district court are considered parties to the mandamus case.

Corporate defendants in a criminal or post-conviction case and corporate amici curiae are required to file disclosure statements.

If counsel is not a registered ECF filer and does not intend to file documents other than the required disclosure statement, counsel may file the disclosure statement in paper rather than electronic form. Counsel has a continuing duty to update this information.

No. 18-1159 Caption: Mountain Valley Pipeline LLC v 6.56 Acres of Land

Pursuant to FRAP 26.1 and Local Rule 26.1,

Owners' Counsel of America
(name of party/amicus)

who is amicus curiae, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

2. Does party/amicus have any parent corporations? ☐ YES ☑ NO
If yes, identify all parent corporations, including all generations of parent corporations:

3. Is 10% or more of the stock of a party/amicus owned by a publicly held corporation or other publicly held entity? ☐ YES ☑ NO
If yes, identify all such owners:

4. Is there any other publicly held corporation or other publicly held entity that has a direct financial interest in the outcome of the litigation (Local Rule 26.1(a)(2)(B))? ☐ YES ☑ NO
If yes, identify entity and nature of interest:

5. Is party a trade association? (amici curiae do not complete this question) ☐ YES ☐ NO
If yes, identify any publicly held member whose stock or equity value could be affected substantially by the outcome of the proceeding or whose claims the trade association is pursuing in a representative capacity, or state that there is no such member:

6. Does this case arise out of a bankruptcy proceeding? ☐ YES ☑ NO
If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ William B. Hopkins, Jr. Date: February 25, 2019

Counsel for: Amicus Curiae

CERTIFICATE OF SERVICE

****

I certify that on February 25, 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

All parties or counsel are registered users fo the CM/ECF system, and will be served by that method.

/s/ William B. Hopkins, Jr.
(signature)

February 25, 2019
(date)

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE OF OWNERS' COUNSEL OF AMERICA IN SUPPORT OF APPELLANTS' MOTION FOR REHEARING AND REHEARING EN BANC

Owners' Counsel of America (OCA) respectfully moves, pursuant to Fed. R. App. P. 29(b)(3) and 29(a)(3), and Fourth Cir. R. 29(a), for leave to file the attached brief amicus curiae.

1. Courts routinely permit non-parties to file amicus curiae briefs in support of the parties in appeals before this court and other courts. Motions for leave to file amicus curiae briefs are granted in recognition that they may helpful to the Court in understanding the importance of the issues involved, determining the rules of law applicable to the case, and to point out to the court material issues the parties' briefs do not address in detail.

2. OCA is an invitation-only national network of the most experienced eminent domain and property rights attorneys. Only one member lawyer is admitted from each state. They have joined together to advance, preserve, and defend the rights of private property owners, and thereby further the cause of liberty, because the right to own and use property is "the guardian of every other right," and the basis of a free society. *See*

James W. Ely, *The Guardian of Every Other Right: A Constitutional History of Property Rights* (3d ed. 2008). OCA is a non-profit 501(c)(6) organization sustained solely by its members. OCA members and their firms have been counsel for a party or amicus in many of the property cases the eminent domain and takings cases the courts nationwide have considered in the past forty years,[1] and OCA members have also authored and edited treatises, books, and law review articles on property law, eminent domain, and property rights.[2]

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1. *See, e.g., United States v. 50 Acres of Land*, 469 U.S. 24 (1984). *See also Preseault v. Interstate Commerce Comm'n*, 494 U.S. 1 (1990); *Arkansas Game and Fish Comm'n v. United States*, 133 S. Ct. 511 (2012), and *Koontz v. St. Johns River Water Mgmt Dist.*, 133 S. Ct. 2586 (2013); *Stop the Beach Renourishment, Inc. v. Fla. Dep't of Envt'l Protection*, 130 S. Ct. 2592 (2010); *Winter v. Natural Resources Def. Council*, 555 U.S. 7 (2008); *Kelo v. City of New London*, 545 U.S. 469 (2005); *San Remo Hotel, L.P. v. City and County of San Francisco*, 545 U.S. 323 (2005); *Lingle v. Chevron U.S.A., Inc.*, 544 U.S. 528 (2005); *Tahoe-Sierra Pres. Council, Inc. v. Tahoe Reg'l Planning Agency*, 535 U.S. 302 (2002); *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001); *City of Monterey v. Del Monte Dunes at Monterey, Ltd.*, 526 U.S. 687 (1999); *Dolan v. City of Tigard*, 512 U.S. 374 (1994); *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003 (1992); *Yee v. City of Escondido*, 503 U.S. 519 (1992); *Nollan v. Cal. Coastal Comm'n*, 483 U.S. 825 (1987); *First English Evangelical Lutheran Church v. Los Angeles County*, 482 U.S. 304 (1987); *Agins v. City of Tiburon*, 447 U.S. 255 (1980); *Kaiser Aetna v. United States*, 444 U.S. 164 (1979).

2. *See, e.g.*, Michael M. Berger, Taking Sides on Takings Issues (Am. Bar Ass'n 2002) (chapter on *What's "Normal" About Planning Delay?*); Michael M. Berger, *Supreme Bait & Switch: The Ripeness Ruse in Regulatory*

(footnote continued on next page)

3. OCA's lawyer-members represent property owners in eminent domain and takings cases in state and federal courts nationwide. Accordingly, they have a keen interest in the issue presented by the petition for rehearing: whether a private condemnor exercising the delegated eminent domain power under the Natural Gas Act may obtain pre-judgment possession of the property to be condemned by way of a preliminary injunction, when Congress has not delegated the ability to obtain pre-judgment possession. This is an issue of pressing national importance, on which the panel decision conflicts not only with established Supreme

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Takings, 3 Wash. U.J.L. & Policy 99 (2000); Michael M. Berger & Gideon Kanner, *Thoughts on the White River Junction Manifesto: A Reply to the "Gang of Five's" Views on Just Compensation for Regulatory Taking of Property*, 9 Loy. L.A.L. Rev. 685 (1986); William G. Blake, The Law of Eminent Domain—A Fifty State Survey (Am. Bar Ass'n 2012) (editor); Leslie A. Fields, Colorado Eminent Domain Practice (2008); John Hamilton, Kansas Real Estate Practice And Procedure Handbook (2009) (chapter on *Eminent Domain Practice and Procedure*); John Hamilton & David M. Rapp, Law and Procedure of Eminent Domain in the 50 States (Am. Bar Ass'n 2010) (Kansas chapter); Gideon Kanner, *Making Laws and Sausages: A Quarter-Century Retrospective of Penn Central Transportation Co. v. City of New York*, 13 Wm. & Mary Bill of Rts. J. 679 (2005); Dwight H. Merriam, Eminent Domain Use and Abuse: *Kelo* in Context (Am. Bar Ass'n 2006) (coeditor); Michael Rikon, *Moving the Cat into the Hat: The Pursuit of Fairness in Condemnation, or, Whatever Happened to Creating a "Partnership of Planning?"*, 4 Alb. Gov't L. Rev. 154 (2011); Randall A. Smith, *Eminent Domain After Kelo and Katrina*, 53 La. Bar J. 363 (2006); (chapters on *Prelitigation Process* and *Flooding and Erosion*).

Court doctrine, but the ruling of at least one other federal court of appeals. The attached proposed amicus brief of OCA sets forth our arguments on this issue.

4. Pursuant to Federal Rule of Appellate Procedure 29(a)(4)(E), amicus certifies that no party's counsel authored the attached proposed brief in whole or in part; no party or party's counsel contributed money intended to fund the brief's preparation or submission; and no person other than amicus, its counsel, and its members contributed money intended to fund the brief's preparation or submission.

5. This motion and proposed brief are timely because they are being filed within the time set forth in Fed. R. App. P. 29(b)(5). The proposed brief complies with Fed. R. App. P. 29(b)(4), because it contains 2,553 words.

6. All parties to this appeal have been notified of our intention to file the proposed brief. Counsel for the Appellee was asked to consent to the filing, but has not responded. Counsel for the Appellants consented.

7. Given amicus's substantial interest in this case and their belief that the attached proposed brief will aid the court in its analysis and

disposition of the motion for rehearing, amicus curiae respectfully moves for leave to file the attached proposed brief as amicus curiae.

Respectfully submitted,

/s/ *William B. Hopkins, Jr.*
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Counsel for Amicus Curiae

Roanoke, Virginia, February 25, 2019.

CERTIFICATE OF COMPLIANCE

Pursuant to Federal Rule of Appellate Procedure Rule 32(g), I certify that this motion complies with the length limitations set forth in Fed. R. App. P. 27(d)(2)(A) because it contains 1,021 words, as counted by Microsoft Word, excluding the items that may be excluded under Fed. R. App. P. 27(a)(2)(B).

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Counsel for Amicus Curiae

Roanoke, Virginia, February 25, 2019.

CERTIFICATE OF SERVICE

I certify that on February 25, 2019, I served the foregoing motion upon all counsel of record through the CM/ECF system.

/s/ *William B. Hopkins, Jr.*

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No. 18-1159 Caption: Mountain Valley Pipeline LLC v 6.56 Acres of Land

Pursuant to FRAP 26.1 and Local Rule 26.1,

Owners' Counsel of America
(name of party/amicus)

who is amicus curiae, makes the following disclosure:
(appellant/appellee/petitioner/respondent/amicus/intervenor)

1. Is party/amicus a publicly held corporation or other publicly held entity? ☐ YES ☑ NO

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If yes, identify any trustee and the members of any creditors' committee:

Signature: /s/ William B. Hopkins, Jr. Date: February 25, 2019

Counsel for: Amicus Curiae

CERTIFICATE OF SERVICE

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I certify that on February 25, 2019 the foregoing document was served on all parties or their counsel of record through the CM/ECF system if they are registered users or, if they are not, by serving a true and correct copy at the addresses listed below:

All parties or counsel are registered users fo the CM/ECF system, and will be served by that method.

/s/ William B. Hopkins, Jr.
(signature)

February 25, 2019
(date)

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IDENTITY AND INTEREST OF AMICUS

Owners' Counsel of America (OCA) is an invitation-only national association of eminent domain and property rights attorneys.[1] OCA has a keen interest in the issue the petition presents because the panel decision conflicts with established Supreme Court eminent domain jurisprudence.

ARGUMENT

There are several fundamental problems with the panel's analysis. Most critically, the district courts' summary judgment orders did not confer a substantive right on MVP. The courts merely determined MVP could be a straight taking plaintiff-condemnor. The substantive rights in all federal takings are the transfer of title. Only then, and after the owner either is provided with compensation or has an irrevocably vested right to obtain it, may the condemnor obtain possession. Any protections in the

1. All parties been notified of our intention to file. Counsel for the Appellants consented. Counsel for the Appellee was asked to consent but has not responded. No party's counsel authored this brief in whole or in part, no party or party's counsel contributed money intended to fund preparing or submitting the brief, and no person other than amicus and its counsel, contributed money intended to fund preparing or submitting this brief.

preliminary injunction process are pale substitutes for these constitutional safeguards.

I. Title Transfer Is The "Substantive" Right In Federal Condemnations

The Supreme Court in *Kirby Forest Industries v. United States*, 467 U.S. 1 (1984), described the "straight taking" power, noting its key feature: transfer of title is the substantive right to which possession is tied:

> The practical effect of final judgment on the issue of just compensation is to give the Government an option to buy the property at the adjudicated price. If the Government wishes to exercise that option, it tenders payment to the private owner, *whereupon title and right to possession vest in the United States.* If the Government decides not to exercise its option, it can move for dismissal of the condemnation action.

Id. at 2 (emphasis added) (citing *Danforth v. United States*, 308 U.S. 271, 284 (1939)).

Similarly, in the two other forms of federal statutory takings, the right to possession similarly vests only upon title transfer. In a quick take, "[o]n filing the declaration of taking and depositing in the court, "title . . . vests in the Government; the land is condemned and taken . . .; and the right to just compensation for the land vests in the persons entitled to the compensation." 40 U.S.C. § 3114(b)(1)–(3)). *See also* 40 U.S.C.

§ 3118 ("the right to take *possession and title* in advance of final judgment" in quick take eminent domain actions) (emphasis added).

In a pure statutory taking, a statute itself vests "all right, title, and interest" in the government. *Kirby*, 467 U.S. at 5, n.5; *see also United States v. Dow*, 357 U.S. 17, 21-22 (1958) ("in both classes of 'taking' cases—condemnation and physical seizure—title to the property passes to the Government only when the owner receives compensation, or when the compensation is deposited into court pursuant to the [Declaration of] Taking Act").

II. Summary Judgment Did Not Transfer Title And Only Recognized MVP's Standing As The Plaintiff

Here, by contrast, the panel concluded that the district courts' summary judgment orders on the three predicates which a private condemnor must satisfy in order to institute an eminent domain action in federal court under 15 U.S.C. § 717f(h), granted MVP a substantive right, even though the court acknowledged that title would not transfer until the end of the case.[2] The panel's focus on the summary judgment orders as the

2. Panel op. at 24-25 ("When immediate possession is granted through a preliminary injunction, *title itself does not pass until compensation is ascertained and paid*, so the landowners could proceed with a trespass

(footnote continued on next page)

substantive actions fundamentally misconstrued the nature and effect of those rulings. Because Congress delegated to MVP only the straight takings power, the district courts' orders could only determine—at most—that MVP may exercise the straight taking power.[3] Thus, the orders only determined that MPV may exercise the delegated federal eminent domain power and could prosecute a condemnation lawsuit, and that the takings are for public purposes. They could not determine the substantive issue in these cases: has MVP *taken* these properties and how much is owed as just compensation? The answer is no, or at least not yet.

That is best illustrated by what the district court's orders did *not* do. They did not vest title to the properties in MVP. They did not establish the amount of just compensation owed the owners. They did not obligate MVP to pay compensation. They did not obligate MVP to complete

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action if the company did not promptly make up the difference.") (emphasis added).

3. The D.C. Circuit concluded earlier this month in *Appalachian Voices v. Fed. Energy Reg. Comm'n*, No. 17-1271, slip op. at 3 (D.C. Cir. Feb. 19, 2019), that in the NGA Congress delegated the "usual" power of eminent domain: "The eminent domain power conferred to Mountain Valley . . . requires the company to go through the 'usual' condemnation process, which calls for 'an order of condemnation and a trial determining just compensation" prior to the taking of private property.'"

the condemnations if it is not willing to pay that amount, and MVP remains free to refuse to exercise its "option" to buy. They did not vest in the property owners an irrevocable right to compensation.

Rulings recognizing the power to institute and maintain an eminent domain action are not the same as rulings on the ultimate issue, whether MVP has actually acquired *title* to the properties. There is a fundamental difference between the "right to exercise eminent domain," and the right to actually obtain ownership of the properties being condemned.

III. A Court Cannot Shortcut By Preliminary Injunction The Usual Straight Takings Process To Transfer The Owners' Substantive Rights To MVP

Lacking the transfer of a substantive right to MVP (the owners' titles) and the corresponding vesting of a substantive right in the owners (the condemnor's irrevocable obligation to pay whatever is determined to be just compensation)—which in every other federal condemnation triggers possession—the Rule 65 preliminary injunction process falls woefully short. Although the district courts attempted to structure the injunctions so that they look somewhat like a quick take, they lack the key protections of a constitutional prejudgment possession: a quick take condemnor obtains title and possession, and in return foregoes the ability to

decline to pay whatever compensation the court may eventually determine. *See* 40 U.S.C. § 3115 (a quick take under § 3114 results in the government's "irrevocable commitment" to pay whatever compensation is eventually determined).

By contrast, MVP has obtained prejudgment possession without the corresponding obligation to pay this as-yet undetermined amount. Which means it retains the straight take option of walking away if the compensation eventually determined is too dear. MVP still has, in the Supreme Court's words, the "option" to decline to pay the "adjudicated price." *Cf. Kirby*, 467 U.S. at 2. In other words, after title transfers, any other federal condemnor who obtains possession cannot decide to *not* obtain title, while here, MVP as a preliminary injunction condemnor can. That this scenario may be unlikely is beside the point. What matters is that MVP is under no legal obligation to exercise its "option."

IV. The Rules Of Civil Procedure Cannot Enlarge MVP's Power, Which Was Limited By Congress To Title And Possession After Payment Of Final Compensation

A judicial order of possession before title transfer intrudes on Congress' sole power to establish whether—and how—to take property. Neither the district courts' equitable powers, nor the Rules Enabling Act, nor

the rules of civil procedure can recognize in MVP more rights (or powers) than Congress has delegated. *See* 28 U.S.C. § 2072(b) (the rules of civil procedure "shall not abridge, enlarge or modify any substantive right.").

But the panel concluded that although Congress did not delegate the quick take power in NGA takings, neither did it take away district courts' equitable powers, nor did it expressly *prohibit* the use of preliminary injunctions to give private condemnors prejudgment possession. This is wrong for three main reasons, each rooted in the standards for Rule 65 injunctions.

1. The key element to any injunction is likelihood of success on "the merits." In reviewing a preliminary injunction, the court looks at the underlying claim. Here, the taking by MVP of the properties upon the either the actual payment of just compensation or vesting of the right to obtain whatever amount is finally determined to be just compensation. If it appears as if MVP is likely to prevail at trial on the merits of this underlying claim, the court then evaluates the other preliminary injunction factors. And the issue being evaluated for determining whether the plaintiff is likely to prevail on the merits must be identical to the issue it is asking the court to enjoin (or in this case to affirmatively order).

But that is not case here. MVP sought immediate possession under the three factors in 15 U.S.C. § 717f(h). But the underlying merits question in these condemnation cases is what will be the just compensation owed to the owners, an issue not a part of the § 717f(h) calculus, on which MVP submitted no evidence on which the district courts could reach a conclusion about the amount of final compensation, and which admittedly has yet to be determined.

The panel, however, wrongly concluded the district courts' grant of summary judgment was a "merits determination." Panel op. at 21. But as we outlined earlier, in straight takings cases like these the merits is whether the condemnor has title, which can only happen here if MVP exercises its option to buy. That, in turn, can only come after the court finally determines the amount of compensation. And that has not yet happened here.

2. The injunctions did not preserve the status quo, they dramatically altered it by affirmatively depriving the property owners of their substantive rights—the right to exclude—which the Supreme Court has repeatedly emphasized is "one of the most essential sticks in the bundle of rights that are commonly characterized as property." *Dolan v. City of*

Tigard, 512 U.S. 374, 393 (1994).[4] In every other federal taking, owners retain the right to exclude until such time as their right to just compensation vests (which has not occurred here). Thus, as detailed earlier, not only did the summary judgment orders *not* grant MVP a substantive right, the injunction actually deprived the owners of one of their most essential substantive rights, the right to exclusive possession of their land and the vested right to compensation when that right is taken.

3. Finally, it does not matter that the injunction bonds sort of look like a quick take deposit. Panel op. at 21 ("The district courts also required Mountain Valley to post a surety bond in an amount double each easement's estimated value, conditioned on its payment of just compensation at the conclusion of proceedings."). But the bonds do not obligate MVP irrevocably to pay whatever the district courts later determine is just compensation, and thus are poor substitutes for quick take deposits.

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4. In *Transwestern Pipeline Co. v. 17.19 Acres of Property Located in Maricopa County*, 550 F.3d 770 (9th Cir. 2008), the court recognized, "preliminary injunctions . . . are primarily issued to preserve the status quo of the parties and as a means for the court to retain jurisdiction over the action"). *Id.* at 776. In denying the injunction, the court noted, "[h]ere, Transwestern [the private NGA pipeline condemnor] seeks not to preserve the status quo, but instead seeks a mandatory injunction, which is 'particularly disfavored' in law." *Id.*

Cf. 40 U.S.C. § 3115 (government's "irrevocable commitment" to pay whatever compensation is eventually determined). The injunctions also did not vest in the owners the corresponding irrevocable right to compensation. *See Albert Hanson Lumber Co. v. United States*, 261 U.S. 581, 587 (1923) ("The owner is protected by the rule that title does not pass until compensation has been ascertained and paid, nor a right to the possession until reasonable, certain, and adequate provision is made for obtaining just compensation.") (citing *Cherokee Nation v. Kansas Ry. Co.*, 135 U.S. 641, 659 (1890)). *Cf.* Panel op. at 23.

The reason a bond is not a "reasonable, certain, and adequate" guarantee of compensation is because when the federal government occupies property without having obtained title, the owners have a governmentally-guaranteed and vested ability to obtain whatever compensation the court determines, and the means to obtain it. Because the power to take property is an attribute of sovereignty and the Fifth Amendment's command is self-executing, this obligation cannot be avoided; Congress has provided a vehicle to obtain after-the-fact compensation: a lawsuit under the Tucker Act, either in a district court (for compensation claims up to $10,000) or in the Court of Federal Claims (for all others). The panel saw

a state law trespass action as the equivalent: "the landowners could proceed with a trespass action if the company did not promptly make up the difference" between the bond and the final compensation. Panel op. at 25. But a bond and an inchoate state law trespass cause of action are not the same as the self-executing right to compensation backed by the federal government and the availability of a federal inverse condemnation judgment to guarantee collection.

First, the injunctions do not compel MVP to pay whatever the courts determine is just compensation. What if the final adjudicated compensation exceeds MVP's current estimate, and the bonds and deposits are insufficient? *See* Panel op. at 21. Or if MVP simply abandons the project because it no longer is profitable to continue? Critically, nothing in the injunction overrules MVP's option under the NGA to *not* take the properties if it does not like the option price, or if it just decides not to proceed at any stage. And what if MVP becomes insolvent, something that owners whose property is taken by the federal government need not worry about? In that situation, any state law trespass claims these owners may have against MVP would likely not represent the "full and perfect equivalent for the property taken." *Monongahela Nav. Co. v. United*

States, 148 U.S. 312, 326 (1893). *Compare* Panel op. at 23 (the bond and a trespass claim are "adequate protections") *with In re City of Stockton*, No. 14-17269 slip op. at 19 (9th Cir. Dec. 10, 2018) (state law inverse condemnation claims against a municipality which have not been reduced to final judgment may be "adjusted in bankruptcy").

In sum, the preliminary injunction bonds are merely *security* for MVP's future conduct, not MVP's irrevocable and enforceable obligation to pay—backed by the self-executing Fifth Amendment—whatever final compensation the courts may ultimately determine, and injunctions do not provide the "reasonable, certain, and adequate" vesting of the right to just compensation the Supreme Court envisioned in *Cherokee Nation*.

CONCLUSION

By virtue of these injunctions, MVP now possesses both its cake (prejudgment possession of the properties), and the ability to eat it (the option to not buy if it doesn't like the final price).

The right solution if MVP desires to obtain pre-compensation possession is painfully simple: it should ask Congress, and not take the shortcut of asking the courts.

Respectfully submitted,

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CERTIFICATE OF COMPLIANCE

Pursuant to Fed. R. App. P. 29(b)(4), amicus curiae states that this brief complies with the type and volume limitations because it contains 2,553 words, excluding those parts of the brief exempted by Fed. R. App. P. 32(a)(7)(b)(iii), and this document has been prepared in a proportionally-spaced typeface in font Century Schoolbook, point sized 14.

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CERTIFICATE OF SERVICE

I hereby certify that I electronically filed the foregoing documents with the Clerk of the Court of the United States Court of Appeals for the Fourth Circuit by using the appellate CM/ECF system, and that participants in the case who are registered CM/ECF users will be served by the system.

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