No. 15-470

In The
Supreme Court of the United States

WILLIAM A. LIVINGSTON, for himself and all others similarly situated,

Petitioner,

v.

PAT FRANK, as the Clerk of the Circuit Court of Hillsborough County, Florida and the CITY OF TAMPA,

Respondents.

On Petition for Writ of Certiorari to the Court of Appeal of Florida, Second District

MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE AND BRIEF AMICUS CURIAE OF OWNERS' COUNSEL OF AMERICA IN SUPPORT OF PETITIONER

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MOTION FOR LEAVE TO FILE BRIEF AMICUS CURIAE

Pursuant to this Court's Rule 37.2(b), Owners' Counsel of America (OCA) respectfully requests leave of the Court to file the attached brief amicus curiae in support of the Petitioner, William A. Livingston.

OCA sought consent of the parties and provided counsel for each with more than ten days' notice of OCA's intent to file this brief. Petitioner has consented to the filing of an amicus brief by OCA, but Respondents Pat Frank and the City of Tampa have withheld consent.

OCA submits this brief to assist the Court in its consideration of the case by explaining how the quick-take procedure—in which property owners are deprived of title immediately upon a deposit of estimated compensation—is constitutional only if the money deposited is the property of the condemnee, and not simply an intangible right to receive compensation in the future, as held by the Florida courts. OCA brings unique expertise to this task. OCA is a network of the most experienced eminent domain and property rights attorneys from across the country who seek 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 (2d ed. 1998). As the lawyers at the front lines of eminent domain law, OCA's members understand the importance of the issues presented by this petition, and how the rule adopted by the Florida courts, if left unreviewed, will undermine the check on the unbridled exercise of the eminent domain power that the Takings Clause provides.

OCA is a non-profit organization, organized under IRC § 501(c)(6) and sustained solely by its members. Since its founding, OCA has sought to use its members' combined knowledge and experience as a resource in the defense of private property ownership, and to make that opportunity available and effective to property owners nationwide. OCA member attorneys have been involved in landmark property law cases in nearly every jurisdiction nationwide. Additionally, OCA members and their firms have been counsel for a party or amici in many of the eminent domain and takings cases this Court has considered in the past forty years. OCA members have also authored treatises, books, and scholarly articles on takings, eminent domain, and compensation, including chapters in the seminal treatise Nichols on Eminent Domain. OCA believes that its members' long experience in advocating for the rights of property owners will provide an additional, valuable viewpoint on the issues presented by this petition.

For the foregoing reasons, the motion of OCA to file a brief amicus curiae should be granted.

Respectfully submitted,

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NOVEMBER 2015.

QUESTIONS PRESENTED

Florida's quick-take mechanism permits the government to acquire ownership of privately-owned land by depositing with the court an estimate of just compensation. The Florida District Court of Appeal held that the deposit is "public money" which merely secures the property owner's right to just compensation, and is not the private property of the condemnee. The court held that the deposit does not become private property until it is actually paid to the landowner. Thus, when the clerk invests the deposits, the interest earned is also public money, and the clerk may give 90% of it to the city. The questions presented are:

1. Is interest earned on the deposit part of the just compensation owed for the taking of the land?

2. Is money deposited by a condemnor to a court registry to take immediate title and ownership of land the private property of the owner whose land was taken?

TABLE OF CONTENTS

TABLE OF AUTHORITIES

Page

CASES

TABLE OF AUTHORITIES—Continued

TABLE OF AUTHORITIES—Continued

CONSTITUTIONS, STATUTES, AND RULES

TABLE OF AUTHORITIES—Continued

Page

OTHER AUTHORITIES

TABLE OF AUTHORITIES—Continued

INTEREST OF AMICUS CURIAE

Owners' Counsel of America (OCA) is an invitation-only national network of the most experienced eminent domain and property rights attorneys. 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 (2d ed. 1998).[1]

As the lawyers on the front lines of property law and property rights, OCA members understand the importance of the issues in this case, and bring unique expertise to this task. OCA is a non-profit 501(c)(6) organization sustained solely by its members, and only one member lawyer is admitted from each state. Since its founding, OCA has sought to use its members' combined knowledge and experience as a resource in the defense of private property ownership, and OCA member attorneys have been involved in landmark property law cases in nearly every jurisdiction nationwide. Additionally, OCA members and their firms have been counsel for a party or

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1. Amicus sought consent of the parties and provided counsel for each with more than ten days' notice of OCA's intent to file this brief. Petitioner has consented to the filing of an amicus brief by OCA, but Respondents Pat Frank and the City of Tampa have withheld consent. Pursuant to this Court's Rule 37, counsel states this brief was not authored in any part by counsel for either party, and no person or entity other than amicus made a monetary contribution intended to fund the preparation or submission of this brief.

amicus in many of the property cases this Court has considered in the past forty years. OCA members have also authored and edited treatises, books, and scholarly articles on property law and property rights. This case concerns OCA because the Florida courts have undermined the long-standing property principle that interest follows principal by redefining the principal as public property, an interpretation which would render the quick-take statute unconstitutional. OCA believes that its members' long experience in eminent domain and advocating for the rights of property owners will provide an additional, valuable viewpoint on the issues presented by this petition.

SUMMARY OF ARGUMENT

This petition presents the fundamental question of whether property can be taken simply by promising to provide future compensation. At first blush, it might seem that this question was settled long ago in decisions such as *United States v. Klamath Indians*, 304 U.S. 119, 123 (1938), and *Jacobs v. United States*, 290 U.S. 13, 17 (1933), in which this Court held that under the Fifth Amendment, payment of just compensation must be "contemporaneous" with the taking. But the Florida courts apparently apply a different rule. In this case and a subsequent decision[2]—contrary to several other state and federal courts—the Florida District Court of Appeal concluded that Florida's quick-take statute permitted the government to take now, and pay later: instead of the quick-take deposit being Petitioner's private

2. *Florida Dep't of Transp. v. Mallard's Cove, LLP*, 159 So. 3d 927 (Fla. Dist. Ct. App. 2015).

property because it represented just compensation for the taking of his land (which occurred when title transferred to the City upon the deposit), the court held that the deposit was a mere IOU, and the deposited money still belonged to the condemnor.

"Interest follows principal," goes the old saw, as acknowledged by this Court in cases like *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164 (1980), and *Phillips v. Washington Legal Foundation*, 524 U.S. 156, 172 (1998). This rule has been a part of the common law "since at least the mid-1700's," *Phillips*, 524 U.S. at 164-65, and is one of the bedrock principles of property law. Applying this rule to the deposit which the City of Tampa (City) made with the clerk should have resulted in the clerk assigning the interest which the deposit generated to Petitioner. But he did not, because a Florida statute allowed him to give 90% of the interest to the City. To rescue the clerk from liability for having taken the interest generated by the quick-take deposit, the Florida Court of Appeal created a distinction never recognized in Florida law (or anywhere else for that matter) between the "right to specific funds," which it recognized as constitutionally protected property, and the mere "entitlement to full compensation," which is not. *See* Pet. App. B-12. The deposit is the latter, the court concluded, which it declared *ipse dixit* to be public property.

This brief makes two points. *First*, the issue of the taking of interest earned on quick-take deposits is wholly separate from the taking of the land in the underlying quick-take actions, and "res judicata" is no impediment to this Court's review. *Second*, the only constitutional reading of Florida's quick-take

statute is that deposits are the private property of condemnees and not the public.

ARGUMENT

I. THE PROPERTY TAKEN BY THE CLERK WAS NOT THE SAME PROPERTY TAKEN BY THE CITY

Petitioner's takings claim seeks recovery from the clerk for wrongfully giving 90% of the interest generated by the deposit to the City, not prejudgment interest on the just compensation award because the City delayed making full payment for taking Petitioner's land. Thus, "res judicata" does not stand in the way of this Court's review.

The Florida court conflated the clerk's taking of the interest on the deposit (the subject of this lawsuit), with the City's taking of Petitioner's land by eminent domain (the subject of the quick-take action). As a consequence, the court wrongly concluded that when Petitioner acknowledged the final judgment in the eminent domain action was "in full settlement of claims for compensation from [the City] whatsoever, including statutory interest," it precluded Petitioner from instituting a takings claim against the clerk to recover the interest on deposit which the clerk later gave to the City. Pet. App. B-9. According to the court, because Petitioner "might have litigated" his claim for the interest on the quick-take deposit in the course of the eminent domain action, he was precluded from asserting it in a subsequent takings action. *Id*. But claim preclusion did not apply for two reasons.

First, in the eminent domain action, Petitioner could not have made a claim against the clerk for the

taking of the interest on the deposit for the simple reason that Petitioner did not know about the clerk investing the deposit and paying 90% of the interest to the City until after the eminent domain judgment had been entered. Additionally, the clerk was not a party to the eminent domain action, so could not be bound by any judgment or settlement in that case. Moreover, interest on the quick-take deposit was generated after the order of taking was entered and the pleadings in that action were closed. In short, Petitioner couldn't disclaim in the eminent domain action that which he didn't know about and which did not yet exist, and make a claim against a person who was not a party.

Second, notwithstanding those facts, Petitioner was legally prohibited as part of the eminent domain action from making a claim against the clerk for interest generated on the deposit. The only interest he could have claimed in that action was prejudgment interest. Prejudgment interest is what condemnees are entitled to in the event the amount of compensation eventually awarded by the court for the taking of their land exceeds the amount of any deposit, and is a requirement of federal constitutional law to make owners whole when full payment of compensation is not provided at the time of the taking. *Kirby Forest Ind., Inc. v. United States*, 467 U.S. 1, 10 (1984) ("But if disbursement of the award is delayed, the owner is entitled to interest thereon sufficient to ensure that he is placed in as good a position pecuniarily as he would have occupied if the payment had coincided with the appropriation."). It is also required by Florida statute:

> Interest is a component of full compensation. Compensation shall be determined in ac-

> cordance with the provisions of Chapter 73, except that interest shall be allowed at the same rate as provided in all circuit court judgments from the date of surrender of possession to the date of payment on the amount that the verdict exceeds the estimate of value set forth in the declaration of taking.

Fla. Stat. § 74.061. As the statute notes, prejudgment interest is a component of the compensation owed for the land taken, and was payable by the City only in the event that Petitioner eventually was awarded more in compensation for his land than the amount which had been deposited. This is not the same as the interest generated by the deposit which Petitioner claims was taken by the clerk. In contrast to prejudgment interest which exists as part of the constitutional mandate of just compensation, the clerk invested the funds on deposit and transferred the interest to the City under the authority of a separate statute. *See* Fla. Stat. § 74.051(4).

Despite these differences, the Florida court plainly confused the two, concluding that prejudgment interest was the same as the interest generated by the deposit:

> Otherwise, in theory, Mr. Livingston could acquire not one but two interest payments on the same monies used to pay, in part, full compensation.

Pet. App. B-10. Thus, it wrongly concluded that to allow Petitioner to claim the interest generated by the deposit would be "double dipping" because it would overcompensate Petitioner for the taking of his land, Pet. App. B-10, when exactly the opposite is true: the interest generated by the deposit has noth-

ing to do with fully compensating Petitioner for the taking of his land.

Prohibiting Petitioner from asserting a takings claim against the clerk would deprive him of the interest generated on the deposit—interest he is entitled to regardless of whether the deposit itself fully covers the eventual compensation award for the land.

II. FLORIDA'S QUICK-TAKE STATUTE DOES NOT PERMIT THE CITY TO "TAKE NOW, PAY LATER"

A. Interest Follows Principal

In two decisions, this Court acknowledged that interest on deposited funds is a private property right when the deposited funds are private property, and that a state cannot simply reassign that property to the public without running afoul of the Takings Clause.

In *Phillips v. Washington Legal Foundation*, 524 U.S. 156 (1998), this Court concluded that interest earned by funds on deposit in lawyers' trust accounts is property protected by the Takings Clause. Under its Interest on Lawyers Trust Account (IOLTA) program, the Texas Supreme Court adopted a rule which required attorneys to place certain client funds that otherwise could not earn interest into a pooled interest-bearing IOLTA account. That interest would be paid to a nonprofit corporation established by the Texas court to deliver legal services to low income clients. This Court concluded that because "under Texas law the principal held in IOLTA trust accounts is the 'private property' of the clients," 524 U.S. at 164-65, and "[t]he rule that 'interest follows principal' has been established under English

common law since at least the mid-1700's," the interest was also private property. The Court rejected the state's claim that the interest follows principal rule was a matter purely of state law, and that Texas had previously carved out an exception to the general rule. The Court examined Texas law and concluded it had always considered interest as following principal, and was therefore owned by whomever owned the principal. *Id*. at 168-69.

Similarly, in *Webb's Fabulous Pharmacies, Inc. v. Beckwith*, 449 U.S. 155, 164 (1980), the Court held that interest is traditionally an "incident of ownership" and that the state could not simply reassign interest on interpleaded funds to the state. In that case, like here, Florida assigned ownership to the government of interest earned when a party interpleaded funds with the court. This Court concluded that the interest was the private property of the owner of the principal, and that Florida's attempt to reassign ownership to the government was a taking:

> Neither the Florida Legislature by statute, nor the Florida courts by judicial decree, may accomplish the result the county seeks simply by recharacterizing the principal as "public money" because it is held temporarily by the court. The earnings of a fund are incidents of ownership of the fund itself and are property just as the fund itself is property. The state statute has the practical effect of appropriating for the county the value of the use of the fund for the period in which it is held in the registry.

Id. at 163.

Phillips and *Webb's Fabulous Pharmacies* establish that certain fundamental aspects of property cannot be abrogated by the state without compensation. But this is precisely what the Florida court did here.

B. Florida's Quick-Take Procedures Are Constitutional Only If The Principal Is Private Property

In both *Webb's Fabulous Pharmacies* and *Phillips*, it was clear that the money on deposit belonged to the depositor, and thus the interest the deposit belonged to them as well. Here, it is no less clear that the quick-take deposit was Petitioner's private property from the moment it was deposited.

Florida's quick-take statute, like similar provisions in other states, allows a condemnor to take immediate possession and ownership of private property upon the deposit of estimated just compensation with the clerk of the court. *See* Fla. Stat. § 74.031. *Cf.* N.J. Stat. Ann. § 20:3-19 (The right to immediate and exclusive possession and title to the property described in the declaration of taking vests in the condemnor upon the filing and service of the declaration of taking, the making of the deposit of estimated compensation and filing of proof of service); Md. Const. art. III, § 40A (property may be taken immediately upon payment into court of an estimate of just compensation); Va. Code § 25.1-305 (condemnor may obtain title by making deposit or filing a certificate of take); *Lemon v. Mississippi Trans. Comm'n*, 735 So. 2d 1013 (Miss. 1999) (invalidating Mississippi's quick-take procedures, which permitted the immediate taking of possession and title upon deposit, as violating due process). The process is known as "quick-take" because it is an "abbreviated" proceeding which permits the condemnor to deprive the

owner of title immediately upon the deposit. *See* Fla. Stat. § 74.061; Pet. App. B-4. By contrast, non-quick-take statutes permit only immediate *possession* upon the deposit of estimated compensation, but do not transfer ownership or title. *See*, *e.g.*, Haw. Rev. Stat. 101-29 (permitting governmental condemnor to take only immediate possession of property "and permitting the State or county to do such work thereon as may be required for the purpose for which the taking of the property is sought"); *James v. City and Cnty. of Honolulu*, 2014 U.S. Dist. LEXIS 115868, at *16 (D. Haw. 2014) ("§ 101-29 establish[es], at a minimum, that [the owner] still has title to the subject property).

The critical event in Florida's quick-take process is the deposit with the court registry, which takes place following an order of the court allowing the taking. The deposit is meant to "fully secure and *fully compensate* the persons entitled to just compensation as ultimately determined by the final judgment." Fla. Stat. § 74.051(2) (emphasis added). The deposit operates to transfer ownership of the land from the private owner to the condemnor, which means that the money deposited must be the former landowner's private property; otherwise, the statute which allows the quick-take is unconstitutional because it would permit a transfer of title and ownership without a corresponding payment of compensation. The Takings Clause, applicable to the states via the Fourteenth Amendment, prohibits private property from being taken for public use without just compensation. U.S. Const. amend. V. This requires payment of compensation contemporaneous with the taking. *United States v. Klamath Indians*, 304 U.S. 119, 123 (1938); *Jacobs v. United States*, 290 U.S. 13, 17

(1933).[3] This does not mean compensation may be provided after the taking. *See Kirby*, 467 U.S. at 10 ("But if disbursement of the award is delayed, the owner is entitled to interest thereon sufficient to ensure that he is placed in as good a position pecuniarily as he would have occupied if the payment had coincided with the appropriation.). It does not mean that the owner merely has a right to future compensation, nor does it mean that a condemnor may provide the property owner with only a vested right to full compensation and not actual compensation, as the Florida court concluded. Pet. App. at B-12 ("It is the right to full compensation that vests [upon the deposit], not a right to specific funds[.]"). Thus, the only way to read the quick-take statute constitutionally is to conclude that the money deposited in quick-takes belongs to the condemnee. The Florida court's decision conflicts with the rulings of several other

3. In non-quick-takes, title to the property (and thus ownership) does not transfer from the condemnee to the condemnor until final judgment determining the amount of compensation, and after the actual payment of all compensation owing. *See*, *e.g.*, Haw. Rev. Stat. 101-26 ("When all payments required by the final judgment have been made, the court shall make a final order of condemnation, which shall describe the property condemned and the purposes of the condemnation, a certified copy of which shall be filed and recorded in the office of the registrar of conveyances, and thereupon the property described shall vest in the plaintiff."); *King v. State Roads Comm'n*, 467 A.2d 1032, 1034 (Md. 1983) ("In conventional condemnation cases, the condemnor files a condemnation petition pursuant to the provisions . . . of the Maryland Rules. No right to possession of the property is obtained by the condemning authority until it pays the full amount of the condemnation judgment, plus costs.").

federal and state courts applying similar quick-take provisions. These courts concluded that the deposit is the private property of the condemnee, as is the interest. *See*, *e.g.*, *Camden I Condominium Inc. v. Dunkle*, 805 F.2d 1532 (11th Cir. 1986); *Moldon v. Cnty. of Clark*, 188 P.3d 76 (Nev. 2008); *McMillan v. Robeson Cnty.*, 137 S.E.2d 105 (N.C. 1964); *Sellers v. Harris Cnty.*, 483 S.W.2d 242 (Tex. 1972).

But if quick-take deposits are *not* the private property of the owners whose land is taken such that interest on those deposits is also their private property as the Florida court concluded, then Florida's quick-take statute violates the Takings Clause because it allows property to be taken without the contemporaneous payment of just compensation. To save the statute from constitutional infirmity and allow the clerk to transfer the interest to the City instead of the condemnee, the Florida court reinterpreted established property and eminent domain law to conclude that the money—the deposit of which had earlier transferred title to Petitioner's land to the City—was public property, and not Petitioner's. By sidestepping fundamental eminent domain principles, applying an illusory distinction (the landowner owner is provided only a right to compensation, and not a right to the funds deposited which secure that right), and pointedly failing to cite or distinguish this Court's holding in *Webb's Fabulous Pharmacies*, the Florida court effectively redefined Petitioner's private property out of existence. Although the contours of what constitutes property is left mostly to definition by state legislatures and courts, this authority is not exclusive, and the Takings and Due Process Clauses constrain a state court's powers to "reimagine" the established rules of property to

declare that what has always been private is now public, as the Florida court did here. *See*, *e.g.*, *Webb's Fabulous Pharmacies*, 449 U.S. at 164 the state may not, "by *ipse dixit* . . . transform private property into public property without compensation"); *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1014 (1992) ("the government's power to redefine the range of interests included in the ownership of property was necessarily constrained by constitutional limits"). The case at bar presents this Court with the opportunity to provide definitive guidance that "property" is not a completely malleable term, but rather embodies a core set of normative principles immunized by the Fifth and Fourteenth Amendments from state court redefinition, especially where, as here, the result of state action is a *per se* taking of property that appears to fly in the face of this Court's rulings:

> If it were to be accepted that the . . . holding in *Lucas* can fairly be understood to embrace the notion that the common law is almost infinitely malleable at the discretion of any court or legislature, then the ambitions of those who would read the takings clause out of the constitution are finally and fully realized. But the common law cannot be so pliable at the hands of adjudicators and lawmakers or it no longer serves its core purpose: the rule of law. To be sure, legislators have power to alter or repeal the common law through legislation, but they do not, consistent with the rule of law, have power to declare the common law something it is not.

James L. Huffman, *Background Principles and the Rule of Law: Fifteen Years After* Lucas, 35 Ecology

L.Q. 1, 12 (2008). This Court has addressed the issue before, although never conclusively resolved it. *See*, *e.g.*, *Stop the Beach Renourishment, Inc. v. Florida Dep't of Envtl. Prot.*, 560 U.S. 702, 715 (2010) (affirming that a state court "may not transform private property into public property"); *PruneYard Shopping Center v. Robins*, 447 U.S. 74, 93 (1980) (Marshall, J., concurring) ("I do not understand the Court to suggest that rights of property are to be defined solely by state law, or that there is no federal constitutional barrier to the abrogation of common law rights by Congress or a state government. The constitutional terms 'life, liberty, and property' do not derive their meaning solely from the provisions of positive law. They have a normative dimension as well, establishing a sphere of private autonomy which government is bound to respect."); *Hughes v. Washington*, 389 U.S. 290, 296-97 (1967) (Stewart, J., concurring) (government cannot wipe out property rights simply by legislating the property out of existence); *Broad River Power Co. v. South Carolina*, 281 U.S. 537, 540-41 (1930) ("[I]t is the province of this Court to inquire whether the decision of the state court rests upon a fair or substantial basis. If unsubstantial, constitutional obligations may not be thus evaded.").

The established rule of interest follows principal—in Florida and elsewhere—is exactly the type of long-standing understandings which the Takings and Due Process Clauses were designed to protect from transfer to the public by state court fiat. *See*, *e.g.*, *Kaiser Aetna v. United States*, 444 U.S. 164, 179-80 (1979) ("we hold that the 'right to exclude,' so universally held to be a fundamental element of the property right, falls within this category of interests that the

Government cannot take without compensation") (footnote omitted); *Phillips v. Washington Legal Foundation*, 524 U.S. 156, 172 (1998) (interest on lawyer's trust accounts is "private property"); *Hodel v. Irving*, 481 U.S. 704, 716 (1987) (passing property by inheritance a fundamental attribute of property); *Babbitt v. Youpee*, 519 U.S. 234, 239 (1997) (the statue in *Hodel* was struck down because "[s]uch a complete abrogation of the rights of descent and devise could not be upheld."). In *PruneYard*, Justice Thurgood Marshall concurred in the Court's holding that no judicial taking had occurred, but acknowledged:

> Quite serious constitutional questions might be raised if a legislature attempted to abolish certain categories of common-law rights in some general way. Indeed, our cases demonstrate that there are limits on governmental authority to abolish "core" common-law rights, including rights against trespass, at least without a compelling showing of necessity or a provision for a reasonable alternative remedy.

PruneYard, 447 U.S. at 93-94 (Marshall, J., concurring). Justice Marshall noted that in *Ingraham v. Wright*, 430 U.S. 651 (1977), the Court determined the Due Process Clause prohibits abolishment of "those privileges long recognized at common law as essential to the orderly pursuit of happiness by free men." *Id.* at 672-73, *quoted in PruneYard*, 447 U.S. at 94 n.3 (Marshall, J., concurring). The universally-accepted rule of interest following principal has for centuries insured that the time value of money is accounted for, and that a dollar paid today is worth the same as a dollar paid tomorrow. In the decision

under review, however, the Florida court radically altered that ancient principle. To avoid ruling that a Florida statute abrogated rights which had been an established part of Florida law, the court decreed those rights never really existed at all. With the stroke of a pen, the court eliminated a fundamental attribute of property. The right of the owner of monies on deposit to the interest which those monies earn is not simply a unilateral expectation or a product of positive law, but an expectation "that has the law behind it." *Kaiser Aetna*, 444 U.S. at 178. Thus, it is property expressly protected by the Fifth and Fourteenth Amendments from arbitrary or capricious state action which includes a state court summarily altering established common law rules. The Fifth and Fourteenth Amendments do not dictate what state law is, *see Lucas*, 505 U.S. at 1035 (Kennedy, J., concurring) ("The Takings Clause does not require a static body of state property law."), but they do constrain all state action. If state courts are not limited from transferring established and universal common law property rights to the public as here, then property truly will be "relegated to the status of poor relation" to other rights protected by the Bill of Rights.[4]

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4. As this Court recognized in *Dolan v. City of Tigard*, 512 U.S. 374 (1994), "We see no reasons why the Takings Clause of the Fifth Amendment, as much a part of the Bill of Rights as the First Amendment or Fourth Amendment, should be relegated to the status of a poor relation in these comparable circumstances." *Id.* at 392 (citing *Marshall v. Barlow's, Inc.*, 436 U.S. 307 (1978); *Air Pollution Variance Bd. of Colorado v. W. Alfalfa Corp.*, 416 U.S. 861 (1974); *New York v. Burger*, 482 U.S. 691

CONCLUSION

This Court should grant the petition and review the judgment of the Florida Court of Appeals.

Respectfully submitted.

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NOVEMBER 2015.

(1987); *Cent. Hudson Gas & Elec. Corp. v. Pub. Serv. Comm'n of New York*, 447 U.S. 557 (1980)).