No. 06-1481

IN THE

Supreme Court of the United States

HARRY McNAMARA, *et al.*,

Petitioners,

v.

THE CITY OF RITTMAN,

Respondent.

ON PETITION FOR A WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE SIXTH CIRCUIT

BRIEF IN OPPOSITION

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QUESTION PRESENTED

Whether a Fifth Amendment takings claimant must first seek compensation in state court under state takings law, including state common law tort remedies, as a necessary step before bringing a federal takings claim in federal court?

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Williamson County Planning v. Hamilton Bank, 473 U.S. 172 (1985), as applied by the District Court and affirmed by the Sixth Circuit serves as an appropriate means of determining the accrual of the petitioners' cause of action. At its core, the petitioners seek to eliminate the state litigation rule requiring state specific action before proceeding directly to Federal Court. The elimination of a requirement that litigants first bring actions in state court creates far more problems than any alleged inconsistency in the application of *Williamson County.*

A threshold question in any Federal takings action is whether or not the case is ripe for review, for if it is not, the court lacks jurisdiction to hear the case. *Williamson County*, 473 U.S. at 194-95. This ripeness requirement is an initial screening mechanism that secures the integrity of the federal judiciary from being flooded by claims of ambiguous origins which have not been clarified by state courts. Moreover, aggrieved takings plaintiffs may needlessly come into Federal Court asserting claims for which they very well could have been compensated under state proceedings designed specifically to address their concerns. For example, in this case it was absolutely necessary for the plaintiff to proceed in the state court first, because Ohio law on the issue of groundwater rights was in need of clarification. As was demonstrated below by the Sixth Circuit certification of the question relating to groundwater rights to the Ohio Supreme Court, state processes were absolutely essential to the adjudication of this specific takings case. One must ask how there can be a taking under the Fifth Amendment unless the petitioners have a right to groundwater in the first instance. In order to satisfy the basic premise of constitutional claims, an action in state court was required under the circumstances.

Requiring the litigants to pursue reasonable and adequate processes for compensation within the State of Ohio was absolutely needed in this case because the Federal Court would otherwise have had no basis upon which to decide the matter. If there was no state litigation rule, and the petitioner first filed in Federal Court, the District Court would have had no basis upon which to determine that there was a taking. How could the petitioner's property be taken without just compensation if the state court had not first determined that there was a constitutional right to groundwater? Consequently, the initial federal inquiry is tethered to the state's scheme by design, in every case.

A. THE OUTCOME REACHED BY THE SIXTH CIRCUIT IS NOT THE RESULT OF A "LACK OF DEFINITION" OF THE *WILLIAMSON COUNTY* REQUIREMENT, BUT RATHER A REFLECTION OF HOW OHIO LAW RELATING TO "TAKINGS" AND GROUNDWATER HAS EVOLVED

1. The Timing of the Application of the State Litigation Rule, Not a Lack of Definition, Produced the Result about Which the Petitioners Complain

The "lack of definition" of the state litigation rule promulgated in *Williamson County* relied upon by the petitioner as a basis for the court's need for review is most certainly not the basis for the outcome which resulted in the Sixth Circuit. The alleged "perverse" outcome where past claims were barred by the statute of limitations, but continuing or current violations were deemed premature, is a function of the timing of the application of the *Williamson County* doctrine – not an ambiguity in the doctrine itself.

As indicated by the Sixth Circuit below, the "central inquiry after *Williamson County*, therefore, is whether or not the state compensation procedures are reasonable, certain, and adequate." *Id.* at 194. This inquiry is necessarily time specific, because a state may have inadequate compensation procedures at one point in time, but these may at a later date be rectified by statute through evolution of the common law. *McNamara, et al. v. Rittman*, 473 F.3d at 638.

2. Ohio Takings Law Materially Developed During the Pendency of This Controversy

Before the decision in *Levin v. City of Sheffield Lake*, 70 Ohio St. 3d 104 (1994), wherein the Ohio Supreme Court made explicit the ability of a mandamus action to force appropriation proceedings, there was no adequate, certain, or appropriate provision in Ohio for obtaining compensation for an alleged taking. *See Coles v. Granville*, 448 F.3d 853, 861 (6th Cir. 2006); *see also Kruse v. Village of Chagrin Falls*, 74 F.3d 694 at 701 (6th Cir. 1996). Thus, prior to the *Levin* decision in 1994, *Williamson County* had little impact on takings claim brought in Ohio, as such claims were immediately ripe for review. *Id.*

There is nothing "perverse" about applying the *Williamson County* rule where state law evolves over time, and plaintiffs' past claims and continuing or current claims are located at vastly different points on the state law time continuum. As pointed out by the Sixth Circuit, the decade of the 1990's was a time of "change and development" in Ohio takings law. *McNamara, supra*, at 638. Although before 1994, there was no adequate procedure under Ohio law for compensation of persons aggrieved by a taking, decisions subsequent to *Levin*, have created a rather extensive and

reliable doctrine, including a state statute and a mandamus cause of action. Ohio Revised Code §§ 163.01-163.62 provide a statutory mechanism by which a governmental actor seeking to take property is under a duty to bring an appropriation proceeding against the landowner. *See* Ohio Rev. C. §§ 163.01 - 163.62; *see also Shemo v. City of Mayfield Heights*, 95 Ohio St. 3d 59 (2002). Additionally, a property owner who believes that his property has been taken in the absence of such an appropriation proceeding may initiate a mandamus action in an Ohio court to force the government actor into the correct appropriation proceeding. *Coles v. Granville*, 448 F.3d 853, 861 (6th Cir. 2006).

The Sixth Circuit noted in *Arnett v. Myers*, 281 F.3d 552 (6th Cir. 2002), that "*Williamson County* specifically instructs that the relevant time frame for determining the adequacy of state provisions for obtaining just compensation for an alleged taking is 'at the time of the taking'". *Id.* at 563. Because Ohio law has evolved over time, and *Williamson County*'s directive applies at the time of the taking, different outcomes regarding accrual are not only understandable, but inevitable. This is particularly true where you have over 50 plaintiffs with individual residential water wells experiencing varying levels of alleged impact over the course of 20 years.[1] In fact, one would not expect the law to remain static forever, particularly the law involving an increasingly scarce natural resource.

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1. The municipal wells operated by the respondent, City of Rittman, went online in 1980, and the plaintiffs' complaints began soon thereafter. Discovery in the state law case indicated that many wells were shallow and some were actually dug by hand, with all of them drawing water very close to the surface. Some wells went dry in the 1980's and some in the 1990's, although quality issues relating to the water were not claims which were pursued in state court.

3. Ohio Law Relating to Underground Water Changed Fundamentally During the Pendency of the Petitioners' Claims

As an example of how time can have a significant impact on claims, consider how Ohio's law regarding groundwater rights evolved in the 1980's and 1990's. For over 100 years, the law had not recognized correlative rights in underground water. *See Frazier v. Brown*, 12 Ohio St. 294 (1861). Then, the decision in *Cline v. American Aggregates*, 15 Ohio St. 3d 384 (1984) came along recognizing correlative rights in underground water, and soon thereafter the Ohio Legislature enacted Ohio Rev. Code § 1521.17, establishing a matrix for determining compensation for the unreasonable use of groundwater. Finally, the Ohio Supreme Court in response to a certified question from the Sixth Circuit recognized a constitutional right to underground water. *See McNamara, et al. v. City of Rittman*, 473 F.3d 633 (6th Cir. 2007). Given the evolution of groundwater law in Ohio, the legal options of property owners aggrieved by the loss of groundwater have been profoundly effected by the date of the claim.

State courts are competent to adjudicate federal constitutional claims. *See, e.g., Sumner v. Mata*, 449 U.S. 539, 549, 101 S. Ct. 764, 770, 66 L. Ed. 2d 722 (1981); *Allen v. McCurry*, 449 U.S. 90, 105, 101 S. Ct. 411, 420, 66 L. Ed. 2d 308 (1980); *Swain v. Pressley*, 430 U.S. 372, 383, 97 S. Ct. 1224, 1230, 51 L. Ed. 2d 411 (1977). As this Court has previously noted, one of the policies underlying the requirement that constitutional claims be raised in state court is to give the state court the first opportunity to rectify federal constitutional concerns related to state action. *Cardinale v. Louisiana*, 394 U.S. 437, 439, 89 S. Ct. 1161, 1163, 22 L. Ed. 2d 398 (1969). Additionally, the requirement that a

party avail himself of remedies available in state court also has the practical effect of permitting development of a complete factual record in state court, to aid the federal courts in their review. *Rose v. Lundy*, 455 U.S. 509, 519, 102 S. Ct. 1198, 71 L. Ed. 2d 379 (1982).

B. THE *WILLIAMSON COUNTY* CRITERIA ARE BASED UPON A SOLID FOUNDATION AND SERVE TO SCREEN OUT CASES THAT ARE NOT IN THE PROPER POSTURE

The rationale behind *Williamson County* is founded in very solid precepts of federal law. In *Parratt v. Taylor*, 451 U.S. 527 (1981), the U.S. Supreme Court articulated the reasoning behind requiring a meaningful post-deprivation process in state courts for alleged violations of the Just Compensation Clause. Actions brought by aggrieved individuals alleging a "taking" at the pre-deprivation stage would simply be unworkable.

> It would be impossible or impracticable to provide a meaningful hearing before the deprivation. *Id.* at 530. The state action necessary to state a claim of taking under the Just Compensation Clause is not complete 'unless or until the state fails to provide an adequate post-deprivation remedy for the property loss.' *Hudson v. Palmer*, 468 U.S. 517, 532 (1984).

So, again, the focus is on the state's individual statutory or common law scheme "at the time of the alleged taking." *Arnett, supra*, at 563. Consequently, it is the timing of the application of the *Williamson County* rule that has created the outcome which the petitioner labels "perverse".

The petitioners seek to lower or remove the threshold requirement of state litigation, effectively resulting in the bringing of alleged takings cases at the "pre-deprivation" stage. Contrary to petitioners' assertion that there is confusion and uncertainty in the federal courts, more recent decisions have reinforced the application of *Williamson County's* second ripeness requirement. *See Pascoag Reservoir & Dam LLC v. Rhode Island*, 337 F.3d 87, 91-92 (1st Cir. 2003); *Daniel v. County of Santa Barbara*, 288 F.3d 375, 382 (9th Cir. 2002); *McKenzie v. City of White Hall*, 112 F.3d 313 (8th Cir. 1997); *Villager Pond, Inc. v. Town of Darien*, 56 F.3d 375, 380 (2nd Cir. 1995). Accord, *The Demise of Federal Takings Litigation*, Author Stewart E. Sterk, William and Mary Law Review (October, 2006).

It is well-settled law that federal courts should abstain from exercising jurisdiction over certain claims where resolution of state law questions would obviate the need for federal court litigation. *Railroad Commission v. Pullman Co.*, 312 U.S. 496 (1941). It is appropriate for a federal court to abstain from exercising jurisdiction in favor of a state's interest in carrying out its domestic policy. *Burford v. Sun Oil Co.*, 319 U.S. 315, 63 S. Ct. 1098, 87 L. Ed. 1424 (1943). The abstention doctrine is meant to express "scrupulous regard for the rightful independence of the state governments" and to assist efficiency of the federal judiciary. *Pullman*, 312 U.S. at 501, citing *Cavanaugh v. Looney*, 248 U.S. 453, 457; *DiGiovanni v. Camden Ins. Assn.*, 296 U.S. 64, 73.

1. The Recent Decision in *San Remo Hotel* Represents the Logical Application of *Williamson County* Ripeness Doctrine

Access to the federal courts in takings cases has become more restrictive of late, as evidenced by the much heralded decision of *San Remo Hotel L.P. v. City and County of San Francisco*, 125 Supreme Court 2491, 2496 (2005). In *San Remo*, the plaintiffs brought suit in state court regarding an "as applied" fee ordinance by the defendant political subdivisions. The plaintiffs framed the claims as state constitutional claims and sought to preserve their Federal takings claims for later adjudication by explicitly making an England Reservation.[2] Ultimately, the California Supreme Court heard the case and noted that there was no Federal question presented or decided. The court analyzed the takings case based both on California Law and U.S. Supreme Court law. *San Remo Hotel v. City and County of San Francisco*, 27 Cal. 4th, 643, 649 (California 2002). When the plaintiffs filed suit in Federal Court (consistent with the England Reservation) the District Court dismissed the case, and the Ninth Circuit affirmed, holding that:

> California takings law is co-extensive with federal takings law and that issue preclusion prevented the plaintiffs from re-litigating takings claims in Federal Court. *San Remo, supra*, 364 F.3d at 1098-99.

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2. *England v. Louisiana State Board of Medical Examiners*, 375 U.S. 411 (1964) (A plaintiff who initially raises a federal claim in federal court but is met with an abstention doctrine that requires litigation of some issues in state court may reserve the right to litigate federal issues later in federal court).

To resolve an alleged conflict with *Santini v. Connecticut Hazardous Waste*, 342 F.3d 188 (2nd Cir. 2003), the United States Supreme Court granted certiorari in the *San Remo* case. In *Santini*, the Second Circuit recognized an exception to the collateral estoppel preclusion of the re-litigation of state claims in Federal Court that had already been brought in state court for plaintiffs who brought those claims solely to comply with *Williamson County*'s ripeness mandate. *Santini* gave rise to the practice of state litigants in the Second Circuit explicitly informing the court and adverse parties in state court that certain Federal claims were reserved for later adjudication, known thereafter as a "Santini Reservation".

Interestingly, the United States Supreme Court not only affirmed the Ninth Circuit, but noted that:

> Federal courts are not free to disregard the full faith and credit statute in order to guarantee takings plaintiffs a day in Federal Court. *San Remo Hotel v. City and County of San Francisco* 125 Supreme Court 2491, 2507 (Rehnquist C.J. concurring in the Opinion).

Like the petitioners herein, the plaintiffs in *San Remo* complained that "according a preclusive effect to state court proceedings would unfairly restrict access to federal courts." Acknowledging the petitioner's concerns directly, the Supreme Court noted:

> Whatever the merits of that concern may be, we are not free to disregard the full faith and credit statute solely to preserve the availability of a federal forum. *Id.* at 2507.

It is difficult to read the *San Remo* decision and find any indication that the petitioner's argument for certiorari herein, favoring expansion of access to federal courts by takings litigants, has any traction in this legal environment. The petitioners' assertion that they should not be required to deal with the state court and should proceed directly to the federal court for their takings claims by right, will find no purchase in light of *San Remo.*

C. AS APPLIED, *WILLIAMSON COUNTY* HAS NOT PRODUCED OPPOSING OR INCONSISTENT RESULTS AMONG THE CIRCUITS OF THE FEDERAL JUDICIARY

1. Eliminating the State Litigation Rule Would Inhibit the Original Development of State Law

In *Samaad*, the Fifth Circuit, citing Texas caselaw establishing that offending governmental conduct constituting a nuisance would "constitute a damage or taking of property", found plaintiffs had failed to carry their burden of establishing that Texas law would unquestioningly afford them no remedy. *Id.* at 935. Noting that the local entity from which plaintiffs seek to recover should be the one to deny just compensation, the court considered the adequacy of Texas procedures as a threshold ripeness analysis pursuant to *Williamson County. Id.* at 934. *Samaad* only stands for the proposition that the *Williamson County* ripeness requirement for a Federal takings claim is not satisfied by *simultaneously* bringing a state law takings claim. *Vulcan Materials Co. v. City of Tehuacana*, 238 F.3d 382, 385 (5th Cir. 2001) (emphasis added).

In *Rockstead v. City of Crystal Lake*, 2006 U.S. App. LEXIS 32553, the district court dismissed the federal takings claims of the plaintiff, because the plaintiff had failed to seek compensation in state court. In *Rockstead*, the plaintiffs claimed that an inverse condemnation action was futile, based upon an antiquated state court decision from 1948, notwithstanding many recent changes in state wetland laws effecting property owner rights.

Upholding the district court's dismissal, the Seventh Circuit Court of Appeals offered a rationale supportive of the second prong of the *Williamson County* analysis quite apropos, considering the petitioners' requests for certiorari. Referring to the "exhaustion" of state remedies characterization of *Williamson County* ripeness doctrine as a "misnomer", the Seventh Circuit Court noted:

> A futility exception broad enough to embrace this case not only would induce owners to shoot themselves in the foot, but would reflect an exaggerated conception of the rigidity of common law doctrines, make the right to sue in federal court depend on uncertain predictions about what state courts would do in a similar case and curtail the evolution of state common law by keeping cases that challenge the existing doctrine out of state court where they could influence the law. *Rockstead* at 10.
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> . . . so, when a question of the meaning or application of the state common law doctrine is at issue, instead of asking a federal judge to guess

> what a state court is likely to do, why not ask the state court? *Id.* at 10.

See also SGB Financial Services, Inc. v. Consolidated City of Indianapolis, 235 F.3d 1036, 1038 (7th Cir. 2000).

As can be seen by the above survey of various circuit courts, the petitioners' argument herein for the abandonment of the state litigation rule appears to have little support. In fact, the judges in the circuits cited have focused on the value of state litigation as a tool for, not only determining the threshold issue of ripeness, but also encouraging the evolution and development of state law. Likewise, the rule reinforces notions of comity.[3]

2. "Exhaustion" of State Remedies Has Never Been a Requirement of *Williamson County*

The petitioners claim that the *Williamson County* state litigation rule has resulted in variation among the circuits, as applied, and the rule holds no value and should be abandoned.[4] Cases cited by the petitioners, however, do not

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3. "Comity" includes "a proper respect for state functions, a recognition of the fact that the entire country is made up of a Union of separate governments, and a continuance of the belief that the National Government will fare best if the States and their institutions are left free to perform their separate functions in their separate ways. *Younger v. Harris*, 401 U.S. 37, 44, 91 S. Ct. 746, 750 (1971).

4. Differences in state law may result in divergent outcomes for cases brought in federal district courts in different states. *See Erie Railroad v. Tompkins*, 304 U.S. 64, 74-77, 58 S. Ct. 817, 820-822, 82 L. Ed. 1188 (1938). Such differing results are inevitable

(Cont'd)

support the petitioners' alarmist rhetoric. The petitioners claim that the Second Circuit requires resort to state takings claims to satisfy the state litigation rule of *Williamson County* and cites *Villager Pond v. Darien*, 56 F.3d 375 (2nd Cir. 1995), *cert. denied*, 519 U.S. 808 (1996), for that proposition. *Villager Pond*, however, concerned a state takings case that "may be used as the basis for an inverse condemnation action to recover compensation for property taken from private individuals, even in the absence of a separate statutory remedy". *Id.* at 380. *See Asociacion DeSubscripcion v. Galarza*, 479 F.3d 63, 81 (1st Cir. 2007). *Villager Pond* does not establish law in the Second Circuit requiring takings plaintiffs to *exhaust* state remedies but does, however, require state takings plaintiffs to resort to the state scheme specifically designed to avoid constitutional injury. *Id.*

In *Samaad v. Dallas*, 940 F.2d 925 (5th Cir. 1991), the petitioner claims the Fifth Circuit requires resort to "all state procedures – even nuisance claims, in order to satisfy Williamson County's state litigation rule". (Page 8 of the petition for writ of certiorari.) *Samaad*, however, does not stand for the proposition that state procedures must be exhausted. In fact, the court looked to established Texas law to determine whether the plaintiff's failure to seek compensation in the state due to a futility argument was accurate. *Id.* at 935.

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and "attributable to our federal system, which leaves to a state, within the limits permitted by the Constitution, the right to pursue local policies diverging from those of its neighbors." *Klaxon Co. v. Stentor Elec. Mfg. Co.*, 313 U.S. 487, 496, 61 S. Ct. 1020, 85 L. Ed. 1477 (1941). This is the nature of federal state interplay after *Williamson County*. *McNamara v. Rittman* 473 F.3d at 633 (6th Cir. 2007).

Perhaps, the case which is most illustrative of the current state of the law upon *Williamson County* was recently decided by the First Circuit in *Asociacion DeSubscripcion Conjunta DelSeguro DeResponsabilidad Obligatorio v. Juan Flores Galarza*, 479 F.3d 63 (1st Cir. 2007). In the *Asociacion* case, a plaintiff insurer asserted a takings claim against Puerto Rico's Secretary of the Treasury pursuant to 42 U.S.C. § 1983 for failing to pay over to the insurer interest accumulated on sums pursuant to Puerto Rico's compulsory liability insurance law. The First Circuit considered the matter on an interlocutory appeal from the U.S. District Court for the District of Puerto Rico of defendant's qualified immunity motion. The First Circuit focused on the fact that *Williamson County* never required an exhaustion of all possible state remedies for purposes of ripeness determination. *Williamson County*, as applied, has focused on state procedures specific to the compensation of aggrieved persons alleging a physical taking. *Id.* at 79. The key component of this prong of *Williamson County* is the availability of a process that is particularly aimed at providing compensation when government action effects a taking. *Id. See also McNamara, et al. v. Rittman*, 473 F.3d 633, 638 (6th Cir. 2007) (referring to the Sixth Circuit's focus on mandamus as "reasonable, certain, and adequate" in Ohio for takings claimants referenced in the *McNamara* decision).

The First Circuit noted:

> Such procedures do not include litigation of a state takings claim or any general remedial cause of action under state law. Rather, the Supreme Court must have had in mind only those procedures specifically designed by the state to avoid constitutional injury in the first instance by providing a means for a plaintiff to obtain compensation for the

> government's taking of property. *Id.* at 79. Requiring the plaintiffs to avail themselves of such a procedure before seeking a federal takings claim protects the state's opportunities to use the scheme it designed specifically to avoid constitutional injury. By contrast, requiring the plaintiffs to invoke any general available state procedure that might provide a remedy for an uncompensated taking before finding a federal claim would "transform" *Williamson County*'s finality rule into a rule of exhaustion". *Id. See also Washlefske v. Winston*, 234 F.3d 179, 183 (4th Cir. 2000).

The First Circuit clearly defined in the *Asociacion* case that there is no exhaustion requirement in physical takings cases. The plaintiffs need only use claims processes specifically designed to compensate aggrieved takings plaintiffs.

The *Asociacion* court directly addressed concerns relating to the application of the state litigation rule, including those arguments upon which the petitioners herein base their request for review. The court found that the state litigation rule as set forth in *Williamson County* and applied throughout the country, does not require that the plaintiffs bring state takings claims necessarily, as that is the most likely scenario to invoke crossover of state and federal issues that trigger preclusion concerns.[5] As the First Circuit points out in the *Asociacion* case:

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5. Chief Justice Rhenquist's criticism of the state litigation rule and his concerns regarding the risk of claimed preclusion raised in *San Remo* have their basis in situations where "state takings claims were brought, and state courts reached federal constitutional issues

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> We consider a state takings claim to be remedial in nature, however, and not a procedure the state has provided for seeking compensation. *Williamson County*, 473 U.S. at 194. A takings claim seeks damages for the unconstitutional taking of property without due compensation. By contrast, an inverse condemnation proceeding is designed to enable the plaintiffs to obtain compensation which, if granted, would avoid the alleged constitutional violation that the takings claim is intended to remedy. This is a subtle, but important distinction. As with more general remedial provisions, requiring a state takings claim as a prerequisite to the federal takings claims effectively would impose an exhaustion requirement – which the Supreme Court explicitly said it did not do in *Williamson County. Id.*

Over time, the *Williamson County* ripeness requirement has become an effective means by which to ensure that takings cases based upon undeveloped or ambiguous state law do not clog the federal courts. Moreover, the doctrine has not been applied for a manner requiring takings plaintiffs to take extreme measures to "exhaust" all conceivable state remedies. As Judge O'Malley cautioned below in *McNamara*

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in the course of ruling on the plaintiff's compensation claims." *Asociacion* at 80. This concern over an overlap between state law and federal principles assumes that federal takings plaintiffs would need to pursue an available state takings claim in order to meet the *Williamson County* ripeness requirements. *Id.* at 80. *See also* Scott Keller, *Judicial Jurisdictional Stripping Mascarading As Ripeness: Eliminating the Williamson County's State Litigation Requirement for Regulatory Takings Claims*, 85 Tex. L. Rev. 199 (2006).

v. Rittman No. 1:00-CV-3046 (N.D. Ohio E.D. August 8, 2002).

> . . . neither *Williamson County* nor any subsequent takings case law holds that a plaintiff must pursue *all conceivable means* of remedy before a federal takings claim is ripe. Taken to its logical extreme, this position would require pursuit of any number of conceivable strategies – not only, for example, advancing all possible judicial claims (negligence, nuisance, trespass, due process) – whether or not those claims are themselves untimely or otherwise subject to well-established defenses – but also, perhaps, seeking private legislation at the state level – before a federal takings claim would ripen. This is not the law. *Id.*

CONCLUSION

Revisiting the *Williamson County* criteria for determining ripeness in "takings" cases is not the answer to the myriad problems encountered by the petitioners. The outcome of the Sixth Circuit decision below, wherein past underground water claims were barred by the statute of limitations and future claims were determined to be unripe for Federal review is a direct result of where those claims fall on the time continuum of Ohio's developing underground water law. Eliminating the state litigation rule would stunt the growth of state law in critical areas where Federal and state claims intertwine. Likewise, Federal Courts would be left in many instances to speculate as to how state courts would rule when faced with "takings" claims relevant upon the interpretation of state law, were it not for the gate keeping function of the *Williamson County* criteria.

For the reasons set forth in this brief, and consistent with the law cited herein, the Respondent City of Rittman, Ohio, respectfully requests that this Honorable Court deny the Writ of Certiorari requested by the Petitioners.

Respectfully submitted,

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