No. 14-770

IN THE

Supreme Court of the United States

BANK MARKAZI,
AKA THE CENTRAL BANK OF IRAN,
Petitioner,

v.

DEBORAH PETERSON, ET AL.,
Respondents.

On Writ of Certiorari to the United States Court of Appeals for the Second Circuit

BRIEF OF *AMICI CURIAE* THE BIPARTISAN LEGAL ADVISORY GROUP OF THE U.S. HOUSE OF REPRESENTATIVES AND 225 INDIVIDUAL MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES IN SUPPORT OF RESPONDENTS

KERRY W. KIRCHER, General Counsel
WILLIAM PITTARD, Deputy General Counsel
TODD B. TATELMAN, Senior Assistant Counsel
ELENI M. ROUMEL, Assistant Counsel
ISAAC B. ROSENBERG, Assistant Counsel
Counsel of Record
KIMBERLY HAMM, Assistant Counsel
OFFICE OF GENERAL COUNSEL
U.S. HOUSE OF REPRESENTATIVES
219 Cannon House Office Building
Washington, D.C. 20515
(202) 225-9700
Isaac.Rosenberg@mail.house.gov

Counsel for Amici Curiae

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INTEREST OF *AMICI CURIAE*[1]

Amicus curiae the Bipartisan Legal Advisory Group of the U.S. House of Representatives – consisting of the Honorable Paul D. Ryan, Speaker; the Honorable Kevin McCarthy, Majority Leader; the Honorable Steve Scalise, Majority Whip; the Honorable Nancy Pelosi, Democratic Leader; and the Honorable Steny H. Hoyer, Democratic Whip – "speaks for, and articulates the institutional position of, the House in all litigation matters." Rule II.8(b), Rules of the House of Representatives, 114th Cong. (2015), *available at* http://clerk.house.gov/legislative/house-rules.pdf. The other *amici* are 225 individual Members of the House who collectively represent approximately 160 million Americans.[2]

This case – which challenges the constitutionality of section 502 of the Iran Threat Reduction and Syria Human Rights Act of 2012 ("Iran Threat Reduction Act"), Pub. L. No. 112-158, 126 Stat. 1214, 1258-60 (2012), codified at 22 U.S.C. § 8772 ("Section 8772") – concerns Congress's broad powers under Article I of the Constitution to legislate in the field of foreign sovereign immunity. The case also concerns Congress's constitutional prerogative to write laws as broadly or narrowly as it deems prudent, and its long-recognized power to enact changes in the law no

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[1] No counsel for a party authored this brief in whole or in part, and no party or counsel for a party made a monetary contribution intended to fund the preparation or submission of this brief. No one other than *amici curiae* or their counsel made a monetary contribution to the preparation or submission of this brief. Letters from the parties consenting to the filing of *amicus* briefs have been filed with the Clerk of the Court.

[2] A complete list of the individual Member *amici* appears in an appendix to this brief. App. A, *infra*, at 1a-10a.

matter the effects on matters pending at the time before the courts.

The House, and the individual *amici* as Article I constitutional officers, have a substantial institutional interest in the constitutionality of laws passed by the House. *Amici*'s interest is particularly substantial here because the House passed Section 8772 by a nearly unanimous – and overwhelmingly bipartisan – vote of 421-to-6. *See* 158 Cong. Rec. H5597-98 (Aug. 1, 2012). That unity of purpose should surprise no one. The House passed Section 8772 to help victims of Iran-sponsored terrorism obtain compensation long owed to them – and, in the process, to prevent Iran from using particular funds to bankroll a nuclear weapons program and future acts of terrorism.

Amici join Respondents in urging the Court to affirm the decision of the Second Circuit.

INTRODUCTION

Respondents are scores of Americans who have been victimized by acts of terrorism sponsored – as the federal courts repeatedly have determined – by Iran, including the 1983 Beirut Marine Barracks Bombing and the 1996 bombing of the Khobar Towers in Saudi Arabia. Long ago, Respondents secured money judgments against Iran to compensate them for their injuries and losses. However, Respondents have been stymied at almost every turn in their efforts to collect what indisputably is owed them. Pet. App. 52a-55a. Among those who have not died while awaiting justice, many are now elderly, and many face dire financial straits. *Id.* at 28a-29a. Petitioner is Bank Markazi, the Central Bank of Iran.

In 2008, Respondents learned that Bank Markazi – through a web of intermediaries – had an interest in certain assets worth billions of dollars held in a Citibank account in New York. *Id.* at 56a-57a. Respondents promptly obtained judicial restraints on those assets and, in 2010, brought this action against Bank Markazi and others seeking turnover of the assets. *Id.* at 62a-63a. Over the next two years, Bank Markazi fought "vigorously" to withhold the assets from Respondents, invoking state, federal, constitutional, and international law in its effort to do so. *Id.* at 54a-55a. Respondents' struggles to have their judgments paid were, by this time, tragically unsurprising. *See, e.g.*, *In re Islamic Republic of Iran Terrorism Litig.*, 659 F. Supp. 2d 31, 49-58, 62 (D.D.C. 2009) (observing numerous practical and legal obstacles plaintiffs historically have faced trying to enforce terrorism-related judgments against Iran).

In February 2012, the President issued an Executive Order that "blocked" all of Bank Markazi's assets in the United States – including the assets at issue in this case (hereinafter, "Blocked Assets"). Exec. Order 13,599, 77 Fed. Reg. 6659, 6659 (Feb. 5, 2012).[3] This order enabled Respondents to pursue the Blocked Assets under existing federal law that authorized turnover of "the blocked assets of any agency or instrumentality of [a] terrorist party." Terrorism Risk Insurance Act of 2002 ("TRIA"), Pub. L. No. 107-297, § 201(a), 116 Stat. 2322, 2337 (2002) (codified at 28 U.S.C. § 1610 note). Despite Bank Markazi's prior admissions that it alone beneficially owned the

[3] Congress authorized the President, in response to national emergencies, to "block" particular foreign assets within the United States, thereby effectively barring any transactions involving those assets. *See, e.g.*, 50 U.S.C. §§ 1701(a), 1702(a)(1)(B).

Blocked Assets, Pet. App. 97a-98a, it continued to fight turnover by quibbling "that the Blocked Assets are not assets 'of ' Bank Markazi," *id.* at 96a.

Contemporaneously with the President's Executive Order, Congress considered legislation to make it easier for those with terrorism-related judgments against Iran to pursue Bank Markazi's assets to enforce those judgments. *See, e.g.*, H.R. 4070, 112th Cong. (2d Sess. 2012). These efforts culminated in the passage of Section 8772, which amends existing federal law and preempts inconsistent state laws that might otherwise be invoked to frustrate Respondents' efforts to attach the Blocked Assets. 22 U.S.C. § 8772(a)(1). When it permits turnover, Section 8772 further operates as an economic sanction to deter Iran from pursuing nuclear weapons and sponsoring additional acts of terrorism. *Id.* § 8772(a)(2). Critically however, Section 8772 does not permit turnover of the Blocked Assets unless a court first determines that no person "other than Iran" has an equitable or beneficial interest in those assets. *Id.* § 8772(a)(2)(A)-(B).

In 2013, the district court made the determinations required by Section 8772 and ordered turnover of the Blocked Assets pursuant to both that law and pre-Section 8772 law. Pet. App. 13a-30a. The Second Circuit affirmed. *Id.* at 2a. Both courts rejected Bank Markazi's argument, renewed here, that Section 8772 violates separation-of-powers principles by "effectively dictating" the outcome of this case. *Id.* at 7a-11a, 114a-15a.

SUMMARY OF ARGUMENT

This case will not decide whether Iran owes Respondents compensation for the losses they have suffered as a result of state-sponsored terrorism. Iran's liability for those losses was determined years ago and is undisputed here. Nor will this case decide whether Respondents generally can enforce their judgments against Iran. Congress long ago empowered Respondents to do so.

Instead, this case will decide whether Congress, in enacting Section 8772, properly changed existing law while this case was pending to make it easier for Respondents to pursue assets indisputably linked to Iran. Over a century of precedent confirms Congress's power to do exactly that. *See generally Plaut v. Spendthrift Farm, Inc.*, 514 U.S. 211 (1995); *Robertson v. Seattle Audubon Soc'y*, 503 U.S. 429 (1992); *United States v. Klein*, 80 U.S. (13 Wall.) 128 (1872); *Pennsylvania v. Wheeling & Belmont Bridge Co.*, 59 U.S. (18 How.) 421 (1856).

Congress has sweeping power to enact laws concerning the sovereign immunity of foreign states, and Section 8772 is such a law. Bank Markazi nonetheless contends that Congress encroached upon the judicial power by enacting Section 8772. But Bank Markazi's contention turns on two distinct – yet equally flawed – premises: *first*, that Congress cannot amend the law to affect a single pending case; and *second*, that Congress cannot amend the law affecting a pending case if the law's factual underpinnings are well-known before the law takes effect. Congress has broad authority to write laws as generalized or particularized as it deems necessary, and Congress properly exercised that authority here. Congress also does not offend separation-of-powers principles by enacting

laws, including Section 8772, on the basis of facts that are known to it.

In arguing to the contrary, Bank Markazi proposes unprecedented limits on Congress's legislative powers. Worse still, it proposes limits that are formless – dependent on multiple "vague distinctions" that would provide Congress no clear guidance when it legislates. *Plaut*, 514 U.S. at 239. Bank Markazi does not offer these vague distinctions to protect the constitutional wall separating Congress and the judiciary, but instead to weaken the ground beneath that wall so as to evade a law it dislikes. Accordingly, the Court should reject Bank Markazi's invitation to "encroach[] on the central prerogatives of [Congress]." *Miller v. French*, 530 U.S. 327, 341 (2000).

ARGUMENT

Bank Markazi bears a very heavy burden asking the Court to invalidate Section 8772. "[J]udg[ing] the constitutionality of an Act of Congress" is "the gravest and most delicate duty that this Court is called upon to perform." *Rostker v. Goldberg*, 453 U.S. 57, 64 (1981) (quotation marks omitted); *see also I.N.S. v. Chadha*, 462 U.S. 919, 951 (1983) ("When any Branch acts, it is presumptively exercising the power the Constitution has delegated to it."). The Court, after all, does "not sit as a superlegislature to judge the wisdom or desirability of legislative policy determinations made in areas that neither affect fundamental rights nor proceed along suspect lines." *City of New Orleans v. Dukes*, 427 U.S. 297, 303 (1976); *see, e.g.*, *Burwell v. Hobby Lobby Stores, Inc.*, 134 S. Ct. 2751, 2785 (2014) ("The wisdom of Congress's judgment on this matter is not our concern.").

This "[d]ue respect for the decisions of a coordinate branch of Government demands that [the Court] invalidate a congressional enactment only upon a plain showing that Congress has exceeded its constitutional bounds." *United States v. Morrison*, 529 U.S. 598, 607 (2000); *see also United States v. Harris*, 106 U.S. 629, 635 (1883) ("lack of constitutional authority to pass an act in question [must be] clearly demonstrated"). Even greater deference is owed on matters over which the political branches have sweeping constitutional authority, *see Rostker*, 453 U.S. at 65, such as foreign sovereign immunity, *see Verlinden B.V. v. Cent. Bank of Nigeria*, 461 U.S. 480, 493 (1983); *Regan v. Wald*, 468 U.S. 222, 242 (1984) (recognizing Court's "classical deference to the political branches in matters of foreign policy").

Here, Bank Markazi fails to show that "Congress has exceeded its constitutional bounds" in passing Section 8772, let alone make "a *plain* showing" that Congress has done so. *Morrison*, 529 U.S. at 607 (emphasis added).

I. CONGRESS HAD AMPLE CONSTITUTIONAL AUTHORITY TO ENACT SECTION 8772.

A. Section 8772 Derives From Numerous Constitutional Powers Entrusted To Congress.

The Constitution gives Congress alone the power to legislate. U.S. Const. art. I, § 1. The Constitution further empowers only Congress "to prescribe the jurisdiction of Federal courts, Art. I, § 8, cl. 9; to define offenses against the 'Law of Nations,' Art. I, § 8, cl. 10; to regulate commerce with foreign nations, Art. I, § 8, cl. 3; and to make all laws necessary and proper to

execute the Government's powers, Art. I, § 8, cl. 18." *Verlinden*, 461 U.S. at 493 n.19.

For nearly 40 years, Congress properly has wielded these express constitutional powers to regulate the sovereign immunity of foreign states. In 1976, Congress first codified this country's foreign sovereign immunity principles. *See generally* Foreign Sovereign Immunities Act of 1976 ("FSIA"), Pub. L. No. 94-583, 90 Stat. 2891 (1976) (codified at 28 U.S.C. §§ 1330, 1441(d), 1602 *et seq*.). Congress subsequently enacted laws that lifted the sovereign immunity of foreign states that sponsor or support terrorism, and created private rights of action against such states. *See, e.g.*, Antiterrorism and Effective Death Penalty Act of 1996 ("AEDPA"), Pub. L. No. 104-132, § 221(a), 110 Stat. 1214, 1241-43 (1996) (codified at 28 U.S.C. § 1605); National Defense Authorization Act for Fiscal Year 2008 ("NDAA FY08"), Pub. L. No. 110-181, § 1083 (a)(1), (b)(1)(A)(iii), 122 Stat. 3, 338-41 (2008) (codified at 28 U.S.C. § 1605A(a), (c)). Congress also enacted laws promoting the enforcement of judgments against state sponsors of terrorism by enabling holders of terrorism-related judgments to attach and execute against the property of offending states, their agencies, and their instrumentalities. *See, e.g.*, 28 U.S.C. §§ 1609-11; TRIA § 201, 116 Stat. at 2337 (codified at 28 U.S.C. § 1610); NDAA FY08 § 1083(a)(1), 122 Stat. at 340 (codified at 28 U.S.C. § 1605A(g)).

Following decades of legislation in the field of foreign sovereign immunity and, again, pursuant to its express constitutional authority, Congress in 2012 overwhelmingly passed Section 8772. *See* 158 Cong. Rec. H5597-98 (Aug. 1, 2012) (vote of 421-to-6); 158 Cong. Rec. S5859 (Aug. 1, 2012) (voice vote). As

explained above, Section 8772 allows Respondents – holders of terrorism-related judgments already obtained against Iran – to seek turnover of certain assets that (i) Iran alone equitably or beneficially owns, 22 U.S.C. § 8772(a)(2)(A), and (ii) the President already had "blocked" pursuant to Executive Order when Section 8772 became law, *id.* § 8772(a)(1)(B).

B. Section 8772 Furthers Multiple Weighty Legislative Interests.

Congress designed Section 8772 to advance two important but distinct legislative interests.

First, Congress intended Section 8772 to promote private rights of action for terrorism-related claims – fashioned by Congress over a decade earlier – by making it easier for certain plaintiffs with judgments in hand to recover the compensation already owed to them under existing federal law. 22 U.S.C. § 8772(a)(1); *see also id.* § 8772(a)(2) (statute meant "to ensure that Iran is held accountable for paying [terrorism-related] judgments"). To do this, Section 8772 expressly removes potential state-law roadblocks to attaching and executing against assets equitably or beneficially owned by Iran's central bank. *See id.* § 8772(a)(1). Congress, of course, "has the power to preempt state law," *Crosby v. Nat'l Foreign Trade Council*, 530 U.S. 363, 372 (2000), including state laws of attachment and execution in federal cases, *see* Fed. R. Civ. P. 69(a)(1); 28 U.S.C. §§ 2071(a), 2072(b). Section 8772 also expressly lifts any immunity that, under prior law, Bank Markazi might have enjoyed from attachment or execution against its assets to satisfy judgments against Iran. 22 U.S.C. § 8772(a)(1)(C), (d)(3); *see also* Pet'r Br. 27-28.

Second, by making it more likely that Iran might be permanently dispossessed of billions of dollars in assets to satisfy its judgment debts to Respondents, Congress intended Section 8772 to pressure Iran economically and thereby deter its "efforts to acquire a nuclear weapons capability" and to perpetrate "other threatening activities." Iran Threat Reduction Act § 101; *accord* Pet. App. 21a, 29a; *see also id.* at 119a ("There can be no serious dispute that § 8772 furthers the United States' legitimate interest in furthering its foreign policy with respect to Iran."). In this respect, Section 8772 is just one part of the comprehensive scheme of economic sanctions embodied by the Iran Threat Reduction Act, and is directly in line with the "complex" history of congressionally-enacted sanctions against that "rogue state." Dianne E. Rennack, Cong. Research Serv., R43311, *Iran: U.S. Economic Sanctions and the Authority to Lift Sanctions*, at 1 (July 15, 2015); *see generally Kenneth Katzman*, Cong. Research Serv., RS20871, *Iran Sanctions* (Nov. 3, 2015). Congress, of course, has the power to levy economic sanctions against a foreign state. *See Crosby*, 530 U.S. at 373-74, 380-81.

C. Congress Reasonably Circumscribed Section 8772 To Further Its Dual Aims.

Congress could have written Section 8772 to apply to all of Iran's blocked assets. It chose not to. Instead, Section 8772 covers only those blocked assets "identified in and the subject of proceedings in the United States District Court for the Southern District of New York in Peterson et al. v. Islamic Republic of Iran et al., Case No. 10 Civ. 4518 (BSJ) (GWG)." 22 U.S.C. § 8772(b). Although Section 8772 nominally applies to a single pending judicial proceeding, the law actually sweeps broadly with respect to unpaid terrorism-

related judgments against Iran, as well as to Iran's blocked assets.

1. The *Peterson* proceeding alone implicates a broad class of judgments benefiting over 1,300 victims of terrorist attacks sponsored by the government of Iran, or the surviving family members and representatives of these victims. *See* Pet. App. 52a-53a & n.1; *see also id*. at 130a-44a (listing judgment creditors). These judgments were entered in nearly 20 independent judicial proceedings, and represented a large segment of all the unpaid terrorism-related judgments against Iran at that time. Further, additional judgment holders could have joined, and did join, the *Peterson* proceeding after Section 8772 became law. *See id*. at 18a-19a; Resp't Br. 47.

The *Peterson* proceeding also implicates roughly $1.75 billion in Iran's blocked assets, which Section 8772 potentially makes available to satisfy those judgments (at least in part). *See id*. at 31a, 53a-54a. When Section 8772 became law, the Blocked Assets represented over 90 percent of all the Iran-linked funds that had been blocked by Executive Order. *See* Office of Foreign Asset Control, U.S. Dep't of the Treasury, Terrorist Assets Report, Calendar Year 2012, at 12, Table 1 ($1.936 billion in blocked funds), *available at* https://www.treasury.gov/resour ce-center/sanctions/Programs/Documents/tar2012.pdf.[4]

[4] This figure has changed little since 2012. *See* Office of Foreign Asset Control, U.S. Dep't of the Treasury, Terrorist Assets Report, Calendar Year 2014, at 14, Table 1 ($1.974 billion in blocked funds), *available at* https://www.treasury.gov/ resource-center/sanctions/Programs/Documents/tar2014.pdf.

2. While Section 8772 sweeps broadly as to the totality of unpaid terrorism-related judgments against Iran, and as to Iran's blocked assets, Congress deliberately cabined the statute to ensure that Iran – and *only* Iran – would be "sanction[ed]" if and when a court ordered turnover of the Blocked Assets. 22 U.S.C. § 8772(a)(2). To this end, the statute authorizes attachment or execution only if a court finds, *inter alia*, that the Blocked Assets effectively belong to Iran alone, *id.* § 8772(a)(2)(A), and further that no one else "holds . . . a constitutionally protected interest in th[ose] assets," *id.* § 8772(a)(2)(B). At the time Section 8772 became law, it was unsettled whether any "person other than Iran" might have a constitutionally protected interest in the assets. *See* Pet. App. 109a, 111a-12a & n.17, 115a-19a.

3. The district court carefully performed its judicial function under Section 8772, considering the voluminous record before it and making the determinations required by the statute. *See id.* at 119a ("In connection with making these determinations, the Court has allowed many submissions; the many felled trees required for this Court to plow through are evidence of that process."). The district court found that Section 8772's requirements were met, including that no one else "has a constitutional, beneficial or equitable interest in the Blocked Assets." *Id.* at 109a; *see also id.* at 111a, 113a. And, while the district court recognized that Section 8772 streamlined the turnover analysis, *see, e.g.*, *id.* at 73a, 97a, 103a, 112a, 118a, 121a, the district court still found turnover independently appropriate under pre-Section 8772 law, *see id.* at 4a, 97a, 100a, 118a.

II. SECTION 8772 DOES NOT VIOLATE SEPARATION-OF-POWERS PRINCIPLES BY APPLYING ONLY TO ONE PENDING CASE.

Bank Markazi does not contend that Congress cannot pass laws, like Section 8772, that make it easier for judgment holders to attach assets linked to foreign states to satisfy unpaid judgments against those foreign states. Bank Markazi instead argues that Congress wrongly usurped judicial power because Section 8772 changes the law only for a single pending case – in essence, that Congress went *too far* because Section 8772 does not go *far enough*. *See* Pet'r Br. 22.

But accepting Bank Markazi's "one case" principle would impose grossly artificial limits on Congress's constitutional prerogative to write laws as broadly or narrowly as Congress deems necessary, and it is inconsistent with the long history of congressional enactments that target discrete and emergent problems. Worse still, this "one case" principle would do violence to Congress's legislative powers while doing *nothing* to protect judicial power against legislative encroachment. Bank Markazi's cramped view of Congress's legislative authority promises only to muddy the line between legislative and judicial power, and frustrate the constitutional system carefully wrought by the Framers.

A. Congress Generally Has Discretion To Legislate As Broadly Or Narrowly As It Sees Fit.

"While legislatures usually act through laws of general applicability, that is by no means their only legitimate mode of action." *Plaut*, 514 U.S. at 239 n.9. Time and again, this Court has recognized Congress's

authority to approach "reform . . . one step at a time, addressing . . . the phase of the problem which seems most acute to the legislative mind." *Williamson v. Lee Optical of Okla., Inc.*, 348 U.S. 483, 489 (1955). Congress simply "need not deal with every problem at once and . . . must have a degree of leeway in tailoring means to ends." *Denver Area Educ. Telecomms. Consortium, Inc. v. F.C.C.*, 518 U.S. 727, 757 (1996) (citation omitted).[5]

Congress, of course, cannot "tailor means to ends" in a manner contrary to the Constitution. This generally means Congress cannot draw legislative distinctions that (i) proceed irrationally or along suspect lines, *see*

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[5] *Accord United States v. Rodgers*, 466 U.S. 475, 484 (1984) ("Resolution of the pros and cons of whether a statute should sweep broadly or narrowly is for Congress."); *Cleland v. Nat'l Coll. of Bus.*, 435 U.S. 213, 220 (1978) ("[T]he Constitution does not require Congress to detect and correct abuses in the administration of all related programs before acting to combat those experienced in one."); *Katzenbach v. Morgan*, 384 U.S. 641, 657 (1966) ("[A] legislature need not 'strike at all evils at the same time.'" (quoting *Semler v. Or. State Bd. of Dental Exam'rs*, 294 U.S. 608, 610 (1935))); *United States v. Carolene Prods. Co.*, 304 U.S. 144, 151 (1938) ("A Legislature may hit at an abuse which it has found, even though it has failed to strike at another."); *N.L.R.B. v. Jones & Laughlin Steel Corp.*, 301 U.S. 1, 46 (1937) ("The Constitution does not forbid 'cautious advance, step by step,' in dealing with the evils which are exhibited in activities within the range of legislative power." (quoting *Carroll v. Greenwich Ins. Co.*, 199 U.S. 401, 411 (1905))); *Roschen v. Ward*, 279 U.S. 337, 339 (1929) ("A statute is not invalid under the Constitution because it might have gone farther than it did . . . ."); *cf. Massachusetts v. E.P.A.*, 549 U.S. 497, 524 (2007) (recognizing that "legislatures . . . do not generally resolve massive problems in one fell . . . swoop" but "instead whittle away at them over time, refining their preferred approach as circumstances change and as they develop a more nuanced understanding of how best to proceed").

Harris v. McRae, 448 U.S. 297, 326 (1980); (ii) unduly infringe fundamental rights and liberty interests, *see Washington v. Glucksberg*, 521 U.S. 702, 719-20 (1997); (iii) deprive those regulated of due process, U.S. Const. amend. V; or (iv) operate as a bill of attainder, *id.* art. I, § 9, cl. 3. Bank Markazi does not contend that Section 8772 violates any of these constitutional limits on Congress's power.

B. Legislative Particularity Is Not A Separation-Of-Powers Concern.

Bank Markazi foregoes conventional attacks on Congress's power and instead tries to squeeze out of the separation-of-powers doctrine – "a *structural safeguard*" – "a remedy" for the "specific harm" it claims to have suffered because of Section 8772's narrowness. *Plaut*, 514 U.S. at 239. This proves too much. Legislative particularity alone is no constitutional vice, and it certainly presents no separation-of-powers problem.

An act of Congress does not violate separation-of-powers principles merely because it operates "in a manner – viz., with particular rather than general effect – that is unusual . . . for a legislature." *Id.* at 228. This is so because "*power* is the object of the separation-of-powers prohibition" – "[n]ot favoritism, nor even corruption." *Id.* "The prohibition is violated" all the same if legislation usurps judicial power only once or "40 times." *Id.* Thus, while "general statute[s] . . . may reduce the *perception* that [a law] . . . was prompted by individual favoritism," *id.* (emphasis added), "[i]t makes no difference whatever to [a] separation-of-powers violation that [the offending law] is in gross rather than particularized," *id.* at 239.

Consequently, "laws that impose a duty or liability upon a single individual or firm are not on that account invalid." *Id.* at 239 n.9. Neither are laws that "refer[] to [one person] by name." *Nixon v. Adm'r of Gen. Servs.*, 433 U.S. 425, 472 (1977). Rather, Congress rightly "may legislate 'a legitimate class of one.'" *Plaut*, 514 U.S. at 239 n.9 (quoting *Nixon*, 433 U.S. at 472). And Congress's legislative authority does not shrink just because litigation has commenced. *See Nat'l Coal. to Save Our Mall v. Norton*, 269 F.3d 1092, 1097 (D.C. Cir. 2001) ("In view of *Plaut*, *Miller v. French* and *Wheeling Bridge*, we see no reason why the specificity should suddenly become fatal merely because there happened to be a pending lawsuit.").

C. Section 8772 Is Consistent With A Long History Of Particularized Legislation.

Bank Markazi tries to evade these sound constitutional principles by claiming that Section 8772's narrowness is "virtually unprecedented," and arguing that the law must be unconstitutional on that account. Pet'r Br. 18.[6] This notion defies Section 8772's presumption of constitutionality, *see supra* 6-7, and ignores the Court's enduring deference to Congress to "[r]esol[ve] . . . the pros and cons of whether a statute should sweep broadly or narrowly," *Rodgers*, 466 U.S.

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[6] *See also, e.g.*, Pet'r Br. 17 ("an unprecedented incursion on the judicial power"); *id.* at 18 ("extreme"); *id.* at 21 ("unprecedented in our Nation's history"); *id.* at 22 ("a structural failure of unprecedented proportions," "a radical departure from this Nation's traditions," and "virtually unheard of in the history of the Republic"); *id.* at 33 ("an extreme departure from the separation of powers"); *id.* at 35 ("an unprecedented legislative exercise of judicial power").

at 484; *see also supra* 13-15 & n.5. More fundamentally, however, Section 8772 is not an historical anomaly.

1. Since the founding of the Republic, Congress has enacted private bills – laws made applicable only to "one or several specified persons, corporations, [or] institutions" – "to address unique problems that public law either created or overlooked." Christopher M. Davis, Cong. Research Serv., RS22450, *Procedural Analysis of Private Laws Enacted: 1986-2013*, at 1 (Apr. 9, 2013) (quotation marks omitted); *see also* Matthew Mantel, *Private Bills and Private Laws*, 99 LAW LIBR. J. 87, 88 (2007).

These bills often granted to named individuals unusual relief from a wide range of generally applicable laws – including laws that affected rights between private parties – as well as legal doctrines – including sovereign immunity – that bar private parties from pursuing claims for money damages. *See Golan v. Holder*, 132 S. Ct. 873, 885-87 (2012) (copyrights and patents); *United States v. Mitchell*, 463 U.S. 206, 212 (1983) (federal sovereign immunity). Critically, private bills never have been deemed to violate separation-of-powers principles simply because those laws hew narrowly. *See Paramino Lumber Co. v. Marshall*, 309 U.S. 370, 380 (1940); *Private Bills in Congress*, 79 HARV. L. REV. 1684, 1688 (1966) ("[I]t would be difficult . . . to conclude that – merely because specific cases are dealt with – private legislation is 'inherently judicial.'").

Consistent with this history, Section 8772 grants Respondents unusual relief from the laws of attachment and execution generally applicable in federal cases. Also consistent with this history, Section 8772 makes it easier for Respondents to overcome Bank Markazi's assertion of sovereign immunity – over

which the political branches have plenary control, *see supra* 7-9 – in order to enforce judgments on claims for money damages.

2. In addition to private bills, Congress repeatedly has passed public laws targeting discrete legislative objects. Such laws include, among others:

(i) the act declaring the legal status of two bridges at the center of pending litigation in *Wheeling Bridge*, 59 U.S. at 429;

(ii) the act directing the Administrator of General Services to take custody of President Nixon's papers and tapes, *Nixon*, 433 U.S. at 429 (upholding Pub. L. No. 93-526, §§ 101-06, 88 Stat. 1695, 1695-98 (1974));

(iii) the act retroactively legalizing fees collected by a single private firm over a set period of time, which act referred by docket number to a single pending suit challenging those fees, *see Thomas v. Network Solutions, Inc.*, 176 F.3d 500, 505-06 & n.9 (D.C. Cir. 1999) (upholding Pub. L. No. 105-174, § 8003, 112 Stat. 58, 93 (1998));

(iv) the act waiving potential statutory hurdles to the construction of a single national monument during the pendency of litigation over its construction, *see Nat'l Coal. to Save Our Mall*, 269 F.3d at 1096-97 (rejecting similar separation-of-powers challenge to Pub. L. No. 107-11, § 3, 115 Stat. 19, 19 (2001)); and

(v) the act that lifted, in a single pending case identified by docket number, Iran's claimed immunity from suit over the 1979 Iran hostage crisis, *see* Departments of Commerce, Justice, and State, the Judiciary, and Related Agencies Appropriations Act, 2002, Pub. L. No. 107-77, § 626(c), 115 Stat. 748, 803 (2001), *as amended by* Pub. L. No. 107-117, Div. B., § 208, 115 Stat. 2230, 2299 (2002), *invalidated on non-separation-of-powers grounds by Roeder v. Islamic Republic of Iran*, 333 F.3d 228, 237 & n.5, 239 (D.C. Cir. 2003), *cert. denied*, 524 U.S. 915 (2004).[7]

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[7] These tailored public laws also include the Rock Island Railroad Transition and Employee Assistance Act ("RITA"), Pub. L. No. 96-254, 94 Stat. 399 (1980), which required the trustee for a defunct railroad's pending bankruptcy proceeding "to provide economic benefits . . . from the estate's assets" to certain unemployed former railroad employees, *Ry. Labor Execs.' Ass'n v. Gibbons*, 455 U.S. 457, 461-63 (1982) (citing RITA §§ 106, 110). This Court characterized RITA as "nothing more than a private bill" "on a rather grand scale," inasmuch as it "applie[d] to only one regional bankrupt railroad," its "employee protection provisions . . . cover[ed] . . . a particular problem of one bankrupt railroad," and it thus was "a response to the problems caused by the bankruptcy of *one* railroad." *Id.* at 470-71. While the Court ultimately invalidated RITA under the Bankruptcy Clause's "uniformity" requirement, *id.* – not on separation-of-powers principles, *see id.* at 465 n.9 – several members of the Court expressed skepticism at oral argument that the law would fall on separation-of-powers grounds, *see* Oral Arg. at 1:14 to 1:16, *Ry. Labor Execs.' Ass'n v. Gibbons*, No. 80-415, 455 U.S. 457 (1982), *available at* https://www.oyez.org/cases/1981/80-415. Moreover, the Court recognized that "uniformity in the applicability of legislation is not required by the Commerce Clause." *Gibbons*, 455 U.S. at 468. Section 8772, of course, derives substantially from Congress's plenary authority over foreign commerce. *See*

3. Bank Markazi tries to muddy this historical landscape by pointing to a handful of authorities that (i) broadly distinguish between judicial and legislative powers and generally decry "trial by legislature," *see* Pet'r Br. 23-25, 29-30; and (ii) reflect state courts' antipathy to "special legislation" during the 19th

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supra 7-9. And, unlike RITA, Section 8772 does not create any new liabilities. *See supra* 4, 9-10.

See also, e.g., Act to Preserve the Mt. Soledad Veterans Memorial in San Diego, California . . . , Pub. L. No. 109-272, 120 Stat. 770 (2006) (transferring ownership of monument to United States during pendency of litigation to enforce injunction against City of San Diego prohibiting city's ownership of monument), *discussed in Paulson v. City of San Diego*, 475 F.3d 1047, 1048 (9th Cir. 2007) (holding that act rendered case moot); Act for the Relief of the Parents of Theresa Marie Schiavo, Pub. L. No. 109-3, §§ 1, 4, 119 Stat. 15, 15 (2005) (granting single federal district court jurisdiction to adjudicate federal or constitutional "suit or claim by or on behalf of Theresa Marie Schiavo" only if "filed within 30 days after the date of enactment of this Act"); Department of Transportation and Related Agencies Appropriations Act, 1997, Pub. L. No. 104-205, § 350, 110 Stat. 2951, 2979 (1996) (effectively prohibiting D.C. Superior Court, "in any pending case," from awarding one father custody of, or rights to visit, his minor child), *invalidated on other grounds*, *Foretich v. United States*, 351 F.3d 1198, 1226 (D.C. Cir. 2003); Joint Resolution to Provide for a Settlement to the Maine Central Railroad Company and Portland Terminal Company Labor-Management Dispute, Pub. L. No. 99-431, 100 Stat. 987 (1986) (effectively ending a single ongoing labor dispute "referred to in Executive Order Numbered 12557 of May 16, 1986"), *constitutionality upheld by Me. Cent. R.R. Co. v. Bhd. of Maint. of Way Emps.*, 835 F.2d 368, 372-73 (1st Cir. 1987) (rejecting separation-of-powers challenge because, in part, "Congress did not decide the dispute on the basis of pre-existing rules, interpreting and applying the law"), *cert. denied*, 486 U.S. 1042 (1988).

century, *see id.* 31-32. None of these authorities casts doubt on Congress's power to legislate as it has here.

Even if all "trials by legislature" involved a single case, the inverse proposition does not ineluctably follow: Not all laws affecting a single case amount to "trials by legislature." Moreover, while "[t]he constitutions of many of the states" independently "forbid private legislation," the federal Constitution "contains no provision against [such] acts enacted by the federal government except for a prohibition of bills of attainder and grants of nobility." *Paramino Lumber*, 309 U.S. at 380; *cf.* U.S. Const. amend. X; *see generally* Anthony Schutz, *State Constitutional Restrictions on Special Legislation as Structural Restraints*, 40 J. LEGIS. 39, 40 (2013-14); Justin R. Long, *State Constitutional Prohibitions on Special Laws*, 60 CLEV. ST. L. REV. 719, 721 n.6 (2012) (listing 46 states' constitutional prohibitions on "special" legislation).

Bank Markazi rightly does not argue that Section 8772 is a bill of attainder, *see* Pet. App. 115a-16a, yet still points to the Bill of Attainder Clause as evincing "broader separation-of-powers concerns" implicit in the Constitution, Pet'r Br. 41-42. No matter whether the Clause may reflect such concerns, *see United States v. Brown*, 381 U.S. 437, 442-46 (1965), it is beside the point when assessing the constitutionality of a law based on its *breadth* rather than its *effect*. Not even the Bill of Attainder Clause "limit[s] Congress to the choice of legislating for the universe, or legislating only benefits, or not legislating at all." *Nixon*, 433 U.S. at 471; *see also id.* at 471 n.33 ("[M]ere specificity of law does not call into play the Bill of Attainder Clause."). The Clause – and by extension separation-of-powers principles – cannot be wielded "as a variant

of the equal protection doctrine" to invalidate "Act[s] of Congress . . . that legislatively burden[] some persons or groups but not all other plausible individuals." *Id.* at 471; *cf. Selective Serv. Sys. v. Minn. Pub. Interest Research Grp.*, 468 U.S. 841, 859 & n.17 (1984) (distinguishing between claims based on equal protection and bill of attainder theories). Simply put, Congress neither offends nor commandeers federal judicial power by passing underinclusive laws.

D. The Court Will Invade Congress's Legislative Power If It Holds That Congress Cannot Legislate For One Case.

The Constitution enumerates each of the three branches' "central prerogatives," but "the boundaries between the[m] . . . are not 'hermetically' sealed." *Miller*, 530 U.S. at 341 (quoting *Chadha*, 462 U.S. at 951). To fulfill its essential purpose as a "structural safeguard," the separation-of-powers doctrine therefore demands "high walls and clear distinctions because low walls and vague distinctions will not be judicially defensible in the heat of interbranch conflict." *Plaut*, 514 U.S. at 239. On the other hand, "the unnecessary building of such walls is, in itself, dangerous, because the Constitution blends, as well as separates, powers in its effort to create a government that will work for, as well as protect the liberties of, its citizens." *Id.* at 245 (Breyer, J., concurring).

Bank Markazi would build the wall between Congress and the judiciary to bar every law "governing a single pending *case*." Pet'r Br. 40. Bank Markazi believes this threshold will ensure that Congress cannot meddle with "[t]he core judicial function . . . to decide particular cases or controversies." *Id.* But

stripped of its baseless assumption that all laws affecting a single case necessarily "decide" the case, Bank Markazi's "one case" principle proves hopelessly unworkable and even dangerous.

1. If the Constitution actually constrained the number of cases that Congress properly could affect by legislation, where exactly between "all cases" and "one case" would legislative power improperly transform into judicial power? Bank Markazi provides the Court no answers and no limiting principle. Congress should not have to guess where on a numerosity spectrum it properly may legislate without violating separation-of-powers principles. Indeed, this Court already has said as much. *See Plaut*, 514 U.S. at 239 ("It makes no difference whatever to [a] separation-of-powers violation that it is in gross rather than particularized . . . .").

2. Far from being "high . . . and clear," *id*, Bank Markazi's proposed "one case" principle is just the opposite. This dispute is a case in point.

Section 8772 applies to "one case" inasmuch as it does not affect Bank Markazi's assets beyond the "proceedings in the United States District Court for the Southern District of New York in Peterson et al. v. Islamic Republic of Iran et al., Case No. 10 Civ. 4518 (BSJ) (GWG)." 22 U.S.C. § 8772(b); *see also id.* § 8772(c)(2). But, as discussed above, the *Peterson* proceeding only nominally amounts to "one case." *See supra* 10-11. In reality, it comprises an umbrella litigation involving "eighteen groups of judgment creditors," who wound up before the district court "in different procedural postures." Pet. App. 52a-53a & n.1; *see also id.* at 2a n.1, 16a-17a. These groups' actions were "litigated in fits and starts" as separate matters until they were "collected together" and, ultimately, "proceeded before" a single district court judge. *Id.* at 54a;

see also id. at 13a-17a. Again, the underlying judgments at issue comprised a substantial portion of all the outstanding terrorism-related judgments against Iran, and the assets at issue comprised nearly all of Iran's blocked assets in the United States. *See supra* 10-12. Bank Markazi's simplistic characterization of this matter as "one case" therefore serves no purpose other than to enable Bank Markazi to bootstrap Section 8772 into a supposed violation of the Court's rulings in *Klein* and its progeny.

3. Indeed, Bank Markazi's "one case" principle, if accepted, could be used to invalidate targeted laws affecting any manner of pending mass or consolidated actions simply because those actions proceed under a single docket number.

For instance, under this "one case" principle, Congress could not pass any laws affecting a single pending class action, even in cases involving legions of class members and claims worth billions of dollars. *See, e.g.*, *Wal-Mart Stores, Inc. v. Dukes*, 131 S. Ct. 2541, 2547 (2011); *In re Joint E. & S. Dist. Asbestos Litig.*, 982 F.2d 721, 725, 728-32 (2d Cir. 1992), *as modified on reh'g*, 993 F.2d 7 (2d Cir. 1993). Nor could Congress pass any laws affecting a single pending multidistrict litigation, even in a proceeding that implicates matters of serious national importance. *See, e.g.*, *In re Volkswagen "Clean Diesel" Mktg., Sales Practices, & Prods. Liab. Litig.*, MDL No. 2672 (N.D. Cal.); *In re Oil Spill by the Oil Rig "Deepwater Horizon" in the Gulf of Mexico, on April 20, 2010*, MDL No. 2179 (E.D. La.); *In re Asbestos Prods. Liab. Litig.*, MDL No. 875 (E.D. Pa.). Nor could Congress pass any laws affecting a single pending government enforcement action to combat allegedly widespread civil rights violations in a single major U.S. city or

state. *See, e.g.*, *United States v. Maricopa Cnty.*, No. 2:12-cv-00981 (D. Ariz.); *United States v. Georgia*, No. 1:10-cv-00249 (N.D. Ga.).

Congress has sanctioned the use of consolidation, joinder, and channeling mechanisms because they promote judicial economy. *See generally* Fed. R. Civ. P. 19, 23; 28 U.S.C. § 1407. Bank Markazi's "one case" principle, however, might discourage Congress from continuing to sanction the use of these mechanisms if their use arbitrarily prevents Congress from changing substantive law to respond to exigencies in a particular case.

Congress might have passed a different law had this case continued to proceed as a patchwork of miscellaneous actions under different docket numbers. The district court's pragmatic corralling of those actions made that approach unnecessary. Section 8772's constitutionality should not turn on the peculiar procedural complexities that led to the consolidation of Respondents' efforts to execute against the Blocked Assets.

* * *

The Constitution does not bar Congress from enacting a law that affects a single case simply *because* the law applies no more broadly. Bank Markazi's proposed "one case" principle would do nothing to gird the wall between judicial and legislative power, but instead would hamstring Congress from passing critical legislation – no matter the scale of the problem at hand, nor how urgent the need for a legislative fix – just because a law might be underinclusive. *See Nixon*, 433 U.S. at 470 (observing that it "would cripple the very process of legislating" if "any individual or group that is made the subject of adverse

legislation can complain that the lawmakers could and should have defined the relevant affected class at a greater level of generality"). The Court should reject Bank Markazi's "low wall[]," built on "vague distinctions," and refrain from running roughshod over Congress's power to tailor means to ends. *Plaut*, 514 U.S. at 239.

III. SECTION 8772 DOES NOT VIOLATE SEPARATION-OF-POWERS PRINCIPLES BY "DICTATING" THE OUTCOME OF THIS CASE.

A. Congress May Freely Change The Law Affecting Pending Cases Without Violating Separation-Of-Powers Principles.

Sometimes Congress passes laws that inadvertently affect cases pending before the courts. Sometimes Congress passes laws that deliberately affect pending cases. No matter its intent, Congress does not violate separation-of-powers principles merely because its laws affect pending cases. *See Miller*, 530 U.S. at 349; *Plaut*, 514 U.S. at 218; *Robertson*, 503 U.S. at 441; *United States v. Schooner Peggy*, 5 U.S. (1 Cranch) 103, 110 (1801). This is true even of laws that strip federal courts of jurisdiction over cases still proceeding before them. *See, e.g.*, *Bruner v. United States*, 343 U.S. 112, 116-17 & n.8 (1952).

What Congress may not do, this Court has said, is pass laws that either interfere with final judgments or compel courts in pending cases to reach particular outcomes under existing law. *See Plaut*, 514 U.S. at 225-26; *Robertson*, 503 U.S. at 438; *Klein*, 80 U.S. (13 Wall.) at 146. In *Plaut*, for instance, Congress purported retroactively to reopen final judgments. 514 U.S. at 225-26. And in *Klein*, Congress purported

to tell this Court to interpret existing law and facts "precisely contrary" to its own view. 80 U.S. at 147. In both instances, Congress encroached upon the courts' exclusive power "not merely to rule on cases, but to *decide* them." *Plaut*, 514 U.S. at 218-19.

Section 8772 neither interferes with a final judgment nor compels the courts to reach a particular outcome under existing law. Section 8772 became effective before the district court ordered turnover in this case. And, as Bank Markazi concedes, Section 8772 "modif[ies] substantive law – including state property law – for [this] case." Pet'r Br. 52; *see also* Pet. 10 ("[Section] 8772 fundamentally changes the governing law."). That should be the end of the matter. *See Robertson*, 503 U.S. at 441.

B. Bank Markazi's "Makeweight" Theory Promises Only To Undermine Legislative Power, Not To Protect Judicial Power.

Bank Markazi urges the Court to invalidate Section 8772 because it believes the law "*effectively* dictates the outcome of this one case." Pet'r Br. 19 (emphasis added); *see also id.* at 17, 42, 45. That would be an extraordinary and unprecedented ruling. This Court never has struck down a statute on separation-of-powers grounds because, in amending the law, Congress "effectively" changed the outcome of a pending case. Nor has Bank Markazi identified a single lower court decision that has invalidated a law on such grounds. Indeed, no such case exists. *See* Howard M. Wasserman, *The Irrepressible Myth of* Klein, 79 U. CIN. L. REV. 53, 55 (2010) ("[I]n almost 140 years, the only case to strike down a law explicitly on *Klein* grounds was *Klein* itself; every *Klein*-based challenge to federal legislation has, quite appropriately, failed.").

This aspect of Bank Markazi's argument hinges on its complaint that the judicial findings required by Section 8772 "were makeweights," inasmuch as the "findings [allegedly] were foregone conclusions" when Congress passed the law. Pet'r Br. 20; *see also id.* at 45-48; Pet. 15, 32. This "makeweight" theory reflects a profound disrespect for both Congress's and the courts' respective roles and, if accepted, would only degrade the wall separating those roles.

1. Under Bank Markazi's "makeweight" theory, legislative power could be deemed to usurp judicial power solely on the basis of factors beyond either Congress's or the courts' control – including a party's own statements in litigation. Again, this dispute is a case in point.

Bank Markazi complains that its ownership of the Blocked Assets was a "foregone conclusion" – and thus a separation-of-powers concern – in light of the repeated admissions about ownership it made below in fighting attachment under pre-Section 8772 law. *See* Pet'r Br. 47; Pet. App. 97a-98a & n.10, 113a. But, the Constitution did not require Congress "to ignore such evidence" when changing the law. *Carolene Prods.*, 304 U.S. at 149. Nor were Bank Markazi's interests in the Blocked Assets unrelated to Congress's aims in passing Section 8772. *See supra* 10-12. Although Bank Markazi's prior assertions made the district court's fact-finding task easier under Section 8772, *see supra* 9-10, 12, Section 8772 still required the court to undertake this fact-finding, which was far from perfunctory, *see* Pet. App. 119a. Insofar as Congress was aware, Bank Markazi might have repudiated its prior assertions after the law's enactment. Nothing in Section 8772 (nor any other law) prevented Bank Markazi from doing so. If Bank Markazi opted not to disavow its

prior assertions for fear of an adverse ruling under pre-Section 8772 law, that was *its* choice – not Congress's.

Thus, Bank Markazi essentially contends that Section 8772 usurps judicial power just because Bank Markazi happened to admit ownership of the Blocked Assets *before* Congress passed Section 8772. Pet'r Br. 47. Accepting this self-serving notion would do nothing more than empower litigants to manufacture separation-of-powers problems to subvert laws they dislike. For instance, even if Bank Markazi had not declared its beneficial interests in the Blocked Assets before Congress *introduced* Section 8772, Bank Markazi still could have made that fact a "foregone conclusion" – and thus rendered Section 8772 invalid under this theory – just by admitting its interests before Congress *enacted* Section 8772. Indeed, any party could contrive a separation-of-powers defect so long as the party admits the adversely dispositive facts before a bill becomes law. Such gamesmanship not only would defy over a century of clear precedent respecting Congress's power to amend laws affecting pending cases; it would exploit judicial processes as a tool to defeat Congress's legislative will.

2. Taken to its natural conclusion, Bank Markazi's "makeweight" theory could be used to invalidate any otherwise valid act of Congress whenever Congress requires courts to determine facts that are known to Congress when it changes the law. For instance, setting aside its admissions of beneficial ownership, Bank Markazi still could have used its "makeweight" theory to fight Section 8772 if, before Congress enacted the law, the district court already found that Bank Markazi beneficially owned the Blocked Assets. *But see, e.g.*, *Ecology Ctr. v. Castaneda*, 426 F.3d 1144,

1150 (9th Cir. 2005) (statute did not improperly compel district court to make factual finding just because district court already found requisite fact that Congress later wrote into amended law). Worse yet, Bank Markazi could have used its "makeweight" theory to challenge Section 8772 if Congress had investigated and determined *for itself* that Bank Markazi beneficially owned the Blocked Assets.

In this respect, Bank Markazi perversely suggests that legislative ignorance *promotes* separation-of-powers principles when, in fact, the opposite is true. While the Constitution "does not require that Congress find for itself every fact upon which it desires to base legislative action," *Yakus v. United States*, 321 U.S. 414, 424 (1944), "[a] legislative body cannot legislate wisely or effectively in the absence of information respecting the conditions which the legislation is intended to affect or change," *McGrain v. Daugherty*, 273 U.S. 135, 175 (1927). Indeed, "[t]he power of inquiry has been employed by Congress throughout our history, over the whole range of national interests concerning which Congress might legislate or decide upon due investigation not to legislate." *Barenblatt v. United States*, 360 U.S. 109, 111 (1959); *see also Eastland v. U.S. Servicemen's Fund*, 421 U.S. 491, 504 n.15 (1975) ("[T]he scope of [Congress's] power of inquiry . . . is as penetrating and far-reaching as the potential power to enact and appropriate under the Constitution." (quotation marks omitted)). Yet, even when Congress makes factual determinations to substantiate its laws, courts are not bound to accept those determinations when applying the law. *See Morrison*, 529 U.S. at 614; *United States v. Lopez*, 514 U.S. 549, 557 n.2 (1995).

It does not "belittle the judicial role" for Congress to reach conclusions about a fact when enacting legislation but not compel the courts to accept its conclusions when applying the law. Pet'r Br. 46; *contra Morrison*, 529 U.S. at 614; *Lopez*, 514 U.S. at 557 n.2. Nor does litigation become "any the less a case or controversy upon which a court possessing the federal judicial power may rightly give judgment, because the plaintiff's claim is uncontested or incontestable." *Pope v. United States*, 323 U.S. 1, 11 (1944).

Bank Markazi theorizes that legislative power encroaches upon judicial power somewhere between congressional speculation and congressional certitude. As with its "one case" principle, however, *see supra* 22-26, Bank Markazi provides the Court no limiting principle for its "makeweight" theory – no "high wall[]," no "clear distinctions." *Plaut*, 514 U.S. at 239. Congress should not have to guess where on a factual-certainty spectrum it properly may legislate. Nor should Congress be discouraged from making informed legislative judgments for fear that knowing too much could render its laws invalid.

3. This Court already has said where the wall between legislative and judicial power properly lies: congressionally "*compelled* . . . findings or results under old law." *Robertson*, 503 U.S. at 438 (emphasis added); *see also id.* (statute may not "direct any particular findings of fact or applications of law, old or new, to fact"). This standard is clear. It is easy to administer. It does not care about a law's *effects* on a pending case, what Congress *knows* when it legislates, or how badly Congress *wants* a court to make a particular statutory finding. *See* Pet'r Br. 45, 48. And, this standard acknowledges the self-evident fact that

Congress writes laws designed to achieve outcomes it prefers and to prevent outcomes it does not prefer. That is the whole point of legislating. *See Nat'l Fed'n of Indep. Bus. v. Sebelius*, 132 S. Ct. 2566, 2579 (2012) ("[Policy] decisions are entrusted to our Nation's elected leaders, who can be thrown out of office if the people disagree with them.").

Whatever Section 8772's effect on the outcome of this case, whatever Congress's intent in crafting the law's requirements, Section 8772 falls squarely on the legislative side of the wall because it does not *compel* the courts to find anything, let alone under old law. The Constitution requires no more.

CONCLUSION

The judgment of the Second Circuit should be affirmed.

Respectfully submitted,

KERRY W. KIRCHER, General Counsel
WILLIAM PITTARD, Deputy General Counsel
TODD B. TATELMAN, Senior Assistant Counsel
ELENI M. ROUMEL, Assistant Counsel
ISAAC B. ROSENBERG, Assistant Counsel
Counsel of Record
KIMBERLY HAMM, Assistant Counsel
OFFICE OF GENERAL COUNSEL
U.S. HOUSE OF REPRESENTATIVES
219 Cannon House Office Building
Washington, D.C. 20515
(202) 225-9700
Isaac.Rosenberg@mail.house.gov

Counsel for Amici Curiae

December 23, 2015

APPENDIX

APPENDIX

LIST OF *AMICI CURIAE* 225 INDIVIDUAL MEMBERS OF THE U.S. HOUSE OF REPRESENTATIVES

Patrick Meehan
Pennsylvania – 7th

Gus M. Bilirakis
Florida – 12th

Robert B. Aderholt
Alabama – 4th

Mike Bishop
Michigan – 8th

Pete Aguilar
California – 31st

Diane Black
Tennessee – 6th

Mark E. Amodei
Nevada – 2nd

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Iowa – 1st

Brad Ashford
Nebraska – 2nd

Earl Blumenauer
Oregon – 3rd

Brian Babin
Texas – 36th

Mike Bost
Illinois – 12th

Lou Barletta
Pennsylvania – 11th

Charles W. Boustany, Jr.
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Cheri Bustos
Illinois – 17th

Ken Calvert
California – 42nd

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John R. Carter
Texas – 31st

Matt Cartwright
Pennsylvania – 17th

Steve Chabot
Ohio – 1st

Jason Chaffetz
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Curt Clawson
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Wm. Lacy Clay
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Steve Cohen
Tennessee – 9th

Chris Collins
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Doug Collins
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Virginia – 10th

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Jim Costa
California – 16th

Ryan A. Costello
Pennsylvania – 6th

Kevin Cramer
North Dakota – At-Large

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John Abney Culberson
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Elijah E. Cummings
Maryland – 7th

Carlos Curbelo
Florida – 26th

Peter A. DeFazio
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Theodore E. Deutch
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Mario Diaz-Balart
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Tennessee – 2nd

Donna F. Edwards
Maryland – 4th

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Eliot L. Engel
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California – 18th

Elizabeth H. Esty
Connecticut – 5th

Blake Farenthold
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Sam Farr
California – 20th

Stephen Lee Fincher
Tennessee– 8th

Michael G. Fitzpatrick
Pennsylvania – 8th

Bill Flores
Texas – 17th

Jeff Fortenberry
Nebraska – 1st

Bill Foster
Illinois – 11th

Lois Frankel
Florida – 22nd

Trent Franks
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John Garamendi
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Bob Gibbs
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Christopher P. Gibson
New York – 19th

Bob Goodlatte
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Kay Granger
Texas – 12th

Garret Graves
Louisiana – 6th

Alan Grayson
Florida – 9th

Glenn Grothman
Wisconsin – 6th

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New Hampshire – 1st

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Kentucky – 2nd

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California – 44th

Vicky Hartzler
Missouri – 4th

Alcee L. Hastings
Florida – 20th

Denny Heck
Washington – 10th

Joseph J. Heck
Nevada – 3rd

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Georgia – 4th

J. French Hill
Arkansas – 2nd

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Texas – 18th

Joseph P. Kennedy, III
Massachusetts – 4th

Lynn Jenkins
Kansas – 2nd

Daniel T. Kildee
Michigan – 5th

Bill Johnson
Ohio – 6th

Derek Kilmer
Washington – 6th

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Ron Kind
Wisconsin – 3rd

Peter T. King
New York – 2nd

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Illinois – 16th

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Robert E. Latta
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Sander M. Levin
Michigan – 9th

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New York – 17th

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Missouri – 3rd

Ben Ray Luján
New Mexico – 3rd

Cynthia M. Lummis
Wyoming – At-Large

Stephen F. Lynch
Massachusetts – 8th

Thomas MacArthur
New Jersey – 3rd

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Sean Patrick Maloney
New York – 18th

Tom Marino
Pennsylvania – 10th

Doris O. Matsui
California – 6th

Michael T. McCaul
Texas – 10th

Betty McCollum
Minnesota – 4th

Jim McDermott
Washington – 7th

James P. McGovern
Massachusetts – 2nd

Patrick T. McHenry
North Carolina – 10th

Donald Norcross
New Jersey – 1st

David B. McKinley
West Virginia – 1st

Eleanor Holmes Norton
District of Columbia

Martha McSally
Arizona – 2nd

Devin Nunes
California – 22nd

Grace Meng
New York – 6th

Pete Olson
Texas – 22nd

Jeff Miller
Florida – 1st

Frank Pallone, Jr.
New Jersey – 6th

John R. Moolenaar
Michigan – 4th

Bill Pascrell, Jr.
New Jersey – 9th

Seth Moulton
Massachusetts – 6th

Ed Perlmutter
Colorado – 7th

Markwayne Mullin
Oklahoma – 2nd

Scott H. Peters
California – 52nd

Jerrold Nadler
New York – 10th

Collin C. Peterson
Minnesota – 7th

Grace F. Napolitano
California – 32nd

Robert Pittenger
North Carolina – 9th

Dan Newhouse
Washington – 4th

Jared Polis
Colorado – 2nd

Richard M. Nolan
Minnesota – 8th

Mike Pompeo
Kansas – 4th

David E. Price
North Carolina – 4th

Charles B. Rangel
New York – 13th

John Ratcliffe
Texas – 4th

Tom Reed
New York – 23rd

James B. Renacci
Ohio – 16th

Reid J. Ribble
Wisconsin – 8th

Kathleen M. Rice
New York – 4th

Martha Roby
Alabama – 2nd

David P. Roe
Tennessee – 1st

Dana Rohrabacher
California – 48th

Todd Rokita
Indiana – 4th

Thomas J. Rooney
Florida – 17th

Peter J. Roskam
Illinois – 6th

Ileana Ros-Lehtinen
Florida – 27th

Keith J. Rothfus
Pennsylvania – 12th

David Rouzer
North Carolina – 7th

Lucille Roybal-Allard
California – 40th

Edward R. Royce
California – 39th

C. A. Dutch Ruppersberger
Maryland – 2nd

Steve Russell
Oklahoma – 5th

Tim Ryan
Ohio – 13th

Gregorio Kilili Camacho Sablan
Northern Mariana Islands

Loretta Sanchez
California – 46th

Adrian Smith
Nebraska – 3rd

John P. Sarbanes
Maryland – 3rd

Christopher H. Smith
New Jersey – 4th

Janice D. Schakowsky
Illinois – 9th

Jason Smith
Missouri – 8th

Adam B. Schiff
California – 28th

Elise M. Stefanik
New York – 21st

Austin Scott
Georgia – 8th

Chris Stewart
Utah – 2nd

Robert C. "Bobby" Scott
Virginia – 3rd

Eric Swalwell
California – 15th

José E. Serrano
New York – 15th

Patrick J. Tiberi
Ohio – 12th

Pete Sessions
Texas – 32nd

Dina Titus
Nevada – 1st

Brad Sherman
California – 30th

Paul Tonko
New York – 20th

Albio Sires
New Jersey – 8th

Norma J. Torres
California – 35th

Louise McIntosh Slaughter
New York – 25th

Michael R. Turner
Ohio – 10th

Nydia M. Velázquez
New York – 7th

Ann Wagner
Missouri – 2nd

Tim Walberg
Michigan – 7th

Mark Walker
North Carolina – 6th

Jackie Walorski
Indiana – 2nd

Mimi Walters
California – 45th

Timothy J. Walz
Minnesota – 1st

Debbie Wasserman Schultz
Florida – 23rd

Randy K. Weber, Sr.
Texas – 14th

Peter Welch
Vermont – At-Large

Brad R. Wenstrup
Ohio – 2nd

Ed Whitfield
Kentucky – 1st

Roger Williams
Texas – 25th

Frederica S. Wilson
Florida – 24th

Robert J. Wittman
Virginia – 1st

Steve Womack
Arkansas – 3rd

Kevin Yoder
Kansas – 3rd

David Young
Iowa – 3rd

Lee M. Zeldin
New York – 1st