No. 07-635

In the Supreme Court of the United States

BRUCE PETERS

Petitioner

v.

VILLAGE OF CLIFTON, ILLINOIS, ET AL.

Respondents

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

MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE AND BRIEF AMICI CURIAE FOR ELIZABETH J. NEUMONT (AND ALL OTHERS SIMILARLY SITUATED) IN SUPPORT OF PETITIONER

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QUESTION PRESENTED

This brief will address the first question presented by the petition, namely:

Whether the "state procedures" aspect of *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172, 194-97 (1985), which mandates that property owners exhaust state judicial remedies before pursuing federal claims for just compensation in federal court, should be overruled.

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MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE

Because respondents have withheld their consent, amici curiae hereby move to file the following brief pursuant to this Court's Rule 37.2(b).[1]

Amici curiae are a certified class of property owners in Monroe County, Florida, who are trying—and have been trying for literally more than a decade—to litigate a federal takings claim in federal court. *See generally Neumont v. State of Florida*, 451 F.3d 1284 (11th Cir. 2006). Like petitioner (and thousands of other property owners around the nation), amici are facing "ripeness" arguments by a governmental defendant who seeks to avoid federal-court adjudication of a federal constitutional claim. In particular, despite class members having filed at least two actions in state court regarding the regulatory action for which they now seek just compensation, amici have long been denied their day in federal court because they have assertedly failed to satisfy the "state procedures" requirement of *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172, 194-97 (1985). *See Neumont v. Monroe County, Florida*, 242 F. Supp. 2d 1265, 1274 (S.D. Fla. 2002) (dismissing amici's federal constitutional claims for just compensation "because plaintiffs have failed to exhaust their state remedies").

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[1] Petitioner has consented to the filing of this brief.

Counsel of record for all parties received notice at least ten days prior to the due date of amici's intention to file this brief.

No counsel for any party authored this brief in whole or in part, and no counsel or party made a monetary contribution intended to fund the preparation or submission of this brief. No person other than amici curiae or its counsel made a monetary contribution to its preparation or submission.

Accordingly, for themselves and their fellow property owners around the country, amici move for leave to file this brief in order to urge the Court to grant the first question presented by petitioner and thereby reconsider *Williamson County*'s state procedures requirement.

INTRODUCTION

In one of his final opinions, Chief Justice Rehnquist wrote for himself and three other Justices "to explain why I think part of our decision in *Williamson County* . . . may have been mistaken." *San Remo Hotel, L.P. v. City & County of San Francisco*, 545 U.S. 323, 348 (2005) (opinion concurring in the judgment). Although he had joined that decision in 1985, two decades of "further reflection and experience [led him] to think that the justifications for its state-litigation requirement are suspect, while its impact on takings plaintiffs is dramatic." *Id.* at 352. Because "no court below ha[d] addressed the correctness of *Williamson County*," [and] neither party has asked us to reconsider it," *id.*, the Chief Justice and his colleagues ultimately determined that reconsideration was not then opportune. But in "an appropriate case," he opined, "the Court should reconsider whether plaintiffs asserting a Fifth Amendment takings claim based on the final decision of a state or local government entity must first seek compensation in state courts." *Id.*

As petitioner persuasively argues, *this* is that case. In contrast to *San Remo Hotel*, petitioner's first question presents the issue squarely. On the merits, and as explained herein, the "state procedures" requirement of *Williamson County* "was not correct when it was decided, and it is not correct today"; therefore, it "ought not to remain as binding precedent." *Lawrence v. Texas*, 539 U.S. 558, 578 (2004). In a word, it should be *overruled*.

SUMMARY OF ARGUMENT

1. It is important to comprehend the precise federal right at issue in cases within the sweep of the state procedures requirement. The property owner in such cases sues to enforce a right to recover just compensation for a taking. That right, and the corresponding obligation of the government to pay just compensation, was always understood to accrue or arise at the time of the taking—and not later. In asserting that the right and the obligation accrued at some later point after the denial of state-law remedies in state court, *Williamson County* deviated sharply from the established understanding of the Just Compensation Clause.

2. The state procedures requirement was not one of the questions presented in *Williamson County*, and so it received only the most cursory treatment in the briefing and argument. Not surprisingly, therefore, the requirement is poorly reasoned. It rests principally on two flawed analogies to inapposite decisions that decree the unavailability of (1) equitable relief against compensable takings, and of (2) relief under the Due Process Clause for random and unauthorized deprivations of property, neither of which is remotely at issue. Nor can the requirement be justified by the principle that the Fifth Amendment proscribes only takings *without just compensation*, which supports a no-equitable-relief rule but not exhaustion of state judicial remedies.

3. The state procedures requirement possesses other defects that demonstrate its doctrinal incoherence. Among these are that the requirement is really an exhaustion mandate that conflicts markedly with the no-exhaustion-of-remedies rule governing other federal rights, as twice recognized in bills passed by the House

of Representatives. In addition, the requirement is in practice ignored by state courts (and by this Court in cases originating from state courts), although it logically should apply in those fora. Finally, while touted as promoting local decisionmaking, the requirement affirmatively invites *dis*respect for state courts by treating them as mere stations on the road to federal court.

ARGUMENT

For the following reasons, the Court should grant the petition in order to give plenary consideration to overruling the state procedures requirement fabricated in *Williamson County Regional Planning Commission v. Hamilton Bank*, 473 U.S. 172, 194-97 (1985).

I. In Creating the State Procedures Requirement, *Williamson County* Deviated Sharply from the Established Understanding of the Just Compensation Clause.

As petitioner notes, the court of appeals held that he "had to unsuccessfully seek relief in state court under a state law takings provision before his claim would ripen" in federal court. Pet. 4. This holding, of course, flowed directly from the "state procedures" requirement of *Williamson County*, under which a property owner must "seek compensation through the [state-law] procedures the State has provided for doing so" before presenting to the federal courts his federal claims for just compensation. 473 U.S. at 194.

A. At Issue Here Is the Right to Recover Just Compensation for Takings of Private Property for Public Use.

In fabricating the state procedures requirement, *Williamson County* referred to a property owner's claiming or suffering "a violation of the Just Compensation

Clause." 472 U.S. at 194-95; *accord id.* at 195 n.13 (referring to a "constitutional violation" stemming from a taking of property). Though it is not unusual to employ the term *violation* in a loose sense in connection with a claim for just compensation, this terminology obscures the true "nature of the constitutional right" at issue. *Id.* Property owners who pursue just compensation in court under the Fifth Amendment do not claim "constitutional violations" in the sense that they sue to enjoin or remedy state action that violates or transgresses constitutional norms. Rather, as the Court articulated in *First English Evangelical Lutheran Church v. County of Los Angeles*, these property owners sue to enforce the government's "constitutional obligation to pay just compensation" along with their corresponding "right to recover just compensation." 482 U.S. 304, 315 (1987) (quoting *Armstrong v. United States*, 364 U.S. 40, 49 (1960), and *Jacobs v. United States*, 290 U.S. 13, 16 (1933)). That is, the owners are pursuing a monetary remedy that is "grounded in the Constitution itself." *Id.* at 315.

B. It Was Always the Law that the Right to Recover Just Compensation Accrues at the Time of the Taking.

When does the government's constitutional obligation to pay just compensation arise? Or, to ask the same thing, when does a property owner's claim for just compensation accrue? The answer is that the taking, the obligation of the taker to pay just compensation, and the owner's claim for compensation come into being simultaneously, as this Court and the lower federal courts consistently held for decades before *Williamson County*. This Court has explained:

> When a taking occurs by physical invasion, . . . the usual rule is that the time of the invasion constitutes the act of taking, and "[it] is that event which gives rise to the claim for compensation and fixes the date as of which the land is to be valued . . . ."

United States v. Clarke, 445 U.S. 253, 258 (1980) (quoting *United States v. Dow*, 357 U.S. 17, 22 (1958)).

Numerous decisions of this Court state essentially the same rule using slightly different phraseology. In *United States v. Dickinson*, 331 U.S. 745 (1947), the Court rejected the government's argument that Dickinson's reclamation of a portion of property previously taken by flooding rendered him ineligible to be paid for the original taking: "[N]o use to which Dickinson could subsequently put the property by his reclamation efforts changed the fact that the land was taken when it was taken and *an obligation to pay for it then arose*." *Id.* at 751 (emphasis added). In *Soriano v. United States*, 352 U.S. 270 (1957), the Court held time-barred petitioner's claim for just compensation for supplies taken during World War II. Although it rejected the argument that the hostilities tolled the applicable limitations period, the Court agreed that petitioner's compensation claim "accrued at the time of the taking." *Id.*; *accord United States v. Rogers*, 255 U.S. 163, 169 (1921) (Having taken plaintiffs' lands, "it was the duty of the government to make just compensation as of the time when the owners were deprived of their property.").[2]

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[2] The law in the Court of Claims was the same. *See, e.g., Steel Improvement & Forge Co. v. United States*, 355 F.2d 627, 631 (Ct. Cl. 1966) ("It is axiomatic that a cause of action for an unconstitutional taking accrues at the time the taking occurs.").

In short, it was the consistent rule of this Court and the lower federal courts for many decades that the constitutional obligation to pay just compensation arises, and the claim for just compensation accrues, at the time of the taking. Whether stated that the event of taking "gives rise to the claim for compensation," *Dow*, 357 U.S. at 22; *Clarke*, 445 U.S. at 258, or that the obligation to pay just compensation is triggered "[a]s soon as private property has been taken," *San Diego Gas & Electric Co. v. City of San Diego*, 450 U.S. 621, 654 (1981) (Brennan, J., dissenting), the rule was well-established. Thus, in asserting that a property owner's monetary claim under the Just Compensation Clause does not accrue "until just compensation has been denied" by the state judicial system, 473 U.S. at 195 n.13, *Williamson County* deviated sharply from the traditional understanding of that Clause.

II. In Creating the State Procedures Requirement, *Williamson County* Built a House on Jurisprudential Sand.

Did such a sharp deviation from decades of consistent constitutional interpretation come after sustained reflection in the face of compelling new authority? Was the state procedures requirement forged in the fires of intensive and extensive doctrinal reassessment in light of developments in the law of just compensation? In a word, ***no***. In fact, quite the opposite: as explained below, the requirement was fabricated without benefit of serious briefing or argument, and it rests principally on flawed analogies to inapposite cases, as well as other misreadings of precedent.

A. The Requirement Was Fabricated Without Benefit of Serious Briefing or Argument.

In the Court's own words, it granted certiorari in *Williamson County* to decide "whether Federal, State, and Local governments must pay money damages to a landowner whose property allegedly has been 'taken' temporarily by the application of government regulations." 473 U.S. at 185. The attorneys general of nineteen states and territories, together with the Solicitor General of the United States, the National Association of Counties, the City of New York, and the City of St. Petersburg, Florida, joined the petitioner in urging the Court to reverse the court of appeals' judgment in favor of the property owner on two alternative grounds: "that a *temporary* regulatory interference with an investor's profit expectation does not constitute a 'taking,'" and "that even if such interference does constitute a taking, the Just Compensation Clause does not require *money damages* as recompense." *Id.* at 175 (emphases added). Four professional and public-interest organizations filed amicus curiae briefs urging affirmance of the judgment. *See id.* at 174.

In the end, all of this briefing was for naught, because the Court did not decide the questions presented. Instead, *Williamson County* left the temporary takings issue "for another day," as it concluded that the property owner's claim for just compensation was "premature." *Id.* at 186; *cf. First English*, 482 U.S. at 310 (deciding the issue after observing that *Williamson County* and other cases had left it undecided). The conclusion that the just compensation claim was premature rested primarily on the application of the rule that a regulatory takings claim "is not ripe until the government entity charged with implementing the regulations has reached

a final decision regarding the application of the regulations to the property at issue." *Id.*; *see also id.* at 186-94 (explicating this "final decision" requirement).

Logically, the opinion could have stopped at that point—but it did not. Instead, the opinion put forth a "second reason [why] the taking[s] claim is not yet ripe," namely, that the property owner "did not seek compensation through the procedures the State has provided for doing so." *Id.* at 194. Out of the twelve merits briefs filed in *Williamson County*, only the Solicitor General's amicus brief—and only as part of a single paragraph in its *Summary* of Argument—argued for anything approaching this "second reason." *See* Brief for the United States as Amicus Curiae Supporting Petitioners at 10; *see also* Brief for Respondent at 39 (responding to point in two short paragraphs). Furthermore, although the "state procedures" issue did arise very briefly at oral argument in *Williamson County*, the Solicitor General's representative refused even to give an unequivocal answer to the question whether "a property owner would have to follow judicial review remedies as well for [regulatory action] to ripen into a taking." 1985 U.S. TRANS LEXIS 76, at *25-26 (Feb. 19, 1985); *see also id.* at *26 ("I think it tends to blend in with the question of whether there should be abstention on the state law question of whether the commission had properly applied state law.").

B. The Requirement Rests Principally on Two Flawed Analogies to Inapposite Decisions.

There are good reasons why the Court "ordinarily do[es] not consider questions outside those presented in the petition for certiorari," and why the Court disregards that rule "only in the most exceptional cases." *Yee v. City of Escondido*, 503 U.S. 519, 535 (1992). The

"state procedures" aspect of *Williamson County* is a perfect illustration of such reasons. When the questions presented did not even touch on state judicial remedies and when the matter did not receive serious briefing or argument, it is no surprise that the fabrication of the state procedures requirement rested principally on two flawed analogies to inapposite decisions.

1. *Ruckelshaus v. Monsanto Co.*

First, the opinion cited *Ruckelshaus v. Monsanto Co.*, 467 U.S. 986, 1016-20 (1984), for the notion that "takings claims against the Federal Government are premature until the property owner has availed itself of the process provided by the Tucker Act." 473 U.S. at 195. From this notion, the opinion purported to draw an analogy: "Similarly, if a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the Just Compensation Clause until it has used the procedure and been denied just compensation." *Id.* at 196. Regardless of the plausibility of the analogy, the premise is wholly bogus. If "takings claims" are meant in this passage to refer to monetary claims for just compensation for completed takings of private property—the actual claim that the property owner asserted in *Williamson County*—then the cited passage from *Monsanto* did not even consider such claims, let alone declare them "premature" until after the property owner had sued the United States under the Tucker Act.[3]

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[3] The Tucker Act grants the Court of Federal Claims subject matter jurisdiction over "any claim against the United States founded upon . . . the Constitution," 28 U.S.C. § 1491(a)(1), including monetary claims for just compensation under the Fifth Amendment.

In *Monsanto*, a company sued in federal district court "seeking *injunctive and declaratory relief* from the operation of" various provisions of the Federal Insecticide, Fungicide, and Rodenticide Act (FIFRA), alleging that "all of the challenged provisions effected a 'taking' of property without just compensation, in violation of the Fifth Amendment." 467 U.S. at 998-99 (emphasis added). Having concluded that some of the challenged provisions might conceivably operate to take the company's property in some circumstances, the Court proceeded to consider (in the passage cited by *Williamson County*) whether that conclusion supported the requested injunctive relief. *Monsanto* concluded that it did not, based on the established rule that "[e]*quitable relief* is not available to enjoin an alleged taking of private property for public use . . . when a suit for compensation can be brought against the sovereign subsequent to the taking." *Id.* at 1016 (emphasis added); *see also id.* at 1017-19 (concluding that such a suit could be brought under the Tucker Act). Thus, the company's request for equitable relief under the Fifth Amendment was not merely *premature*, it was *not available at all*. In other words, there was nothing the company could do to "ripen" its claim for equitable relief; rather, that claim simply had no merit, period.

What about a Tucker Act suit against the government in the Court of Federal Claims? Could such a suit be called a *prerequisite* to asserting a *monetary* claim against the government for just compensation for a taking of property? No, as the *Monsanto* decision confirms, a Tucker Act lawsuit ***is*** the assertion of a claim for just compensation: "whatever taking may occur is one for public use, and a Tucker Act remedy is available to provide Monsanto with just compensation." *Id.* at 1020;

accord supra note 3. Thus, if *Williamson County* were correct that a property owner must "avail[] itself of the process provided by the Tucker Act" *before* pursuing its claim for just compensation, 473 U.S. at 195, then it would be the rule that a property owner must essentially bring a Tucker Act suit before bringing a Tucker Act suit. In other words, an owner's Tucker Act suit for just compensation would be "premature" until the property owner had brought a Tucker Act suit for just compensation. *Id.* Obviously, this *reductio ad absurdum* deserves no respect, and *Monsanto* provides no reasoned basis for the state procedures requirement.

2. *Parratt v. Taylor*

The fabrication of the state procedures requirement in *Williamson County* also rested on the supposed analogy between takings of private property "without just compensation" and deprivations of property "without due process of law." The Court relied on *Parratt v. Taylor*, 451 U.S. 527 (1981), which it described as having "ruled that a person deprived of property through a random and unauthorized act by a state employee does not state a claim under the Due Process Clause merely by alleging the deprivation of property." 473 U.S. at 195. In this situation, "the State's action is not 'complete' in the sense of causing a constitutional injury 'unless or until the State fails to provide an adequate postdeprivation remedy for the property loss.'" *Id.* (quoting *Hudson v. Palmer*, 468 U.S. 517, 532 n.12 (1984)). Then came another purported analogy: "Likewise, because the Constitution does not require pretaking compensation, and is instead satisfied by a reasonable and adequate provision for obtaining compensation after the taking, the State's action here is not 'complete' until the State fails to provide adequate compensation for the taking." *Id.*

This analogy has two fatal flaws. First, it provides no support for the go-first-to-state-court requirement actually imposed by *Williamson County*. When a state does indeed "provide an adequate postdeprivation remedy for the property loss" as contemplated by *Parratt*, the deprived property owner does not pursue that state-law remedy *before* suing in federal court under the Due Process Clause. To the contrary, the property owner must pursue the state-law remedy *instead of* suing in federal court. As *Williamson County* put it, the owner who has such a remedy categorically "does not state a claim under the Due Process Clause." 473 U.S. at 195. If the analogy with the Just Compensation Clause were valid, the property owner having a state-law remedy for just compensation categorically could not state a claim under the Just Compensation Clause *in any court*. Obviously, no one believes that, then or now.

Second, and more important, the notion that "the State's action [in respect to a taking] is not 'complete' until the State fails to provide adequate compensation for the taking," *id.*, is flatly contrary to the Court's sustained and reasoned consideration of the matter in *First English*. There, the Court held that the government's taking of property, without more, gives rise to an "obligation to pay just compensation" on the government's part, and a corresponding "right to recover just compensation" on the owner's part. 482 U.S. at 315. While a postdeprivation remedy might allow the government to escape liability for a denial of procedural due process (as in *Parratt*), once a taking has occurred, governmental liability for just compensation is inescapable: "*no subsequent action* by the government can relieve it of the duty to provide compensation." *Id.* at 321 (emphasis added). This formulation has continued to command the Court's assent. *See Tahoe-Sierra Preservation Council v. Tahoe*

Regional Planning Agency, 535 U.S. 302, 328 (2002) (quoting this passage and opining that "nothing that we say today qualifies [that] holding" of *First English*).

C. The Requirement Finds No Support in the Principle that the Amendment Proscribes Only Takings *Without Just Compensation*.

Along with flawed analogies to *Monsanto* and *Parratt*, *Williamson County* relied on the uncontroversial principle that the "Fifth Amendment does not proscribe the taking of property; it proscribes taking without just compensation." 473 U.S. at 194. Indeed, this principle was so significant that the opinion both reiterated and emphasized the point: "because the Fifth Amendment proscribes takings *without just compensation*, no constitutional violation occurs until just compensation has been denied." *Id.* at 195 n.13.

Both of these propositions are quite true; both are also quite irrelevant to whether property owners must seek just compensation in state court under state law. As explained in Part I.A above (pp. 4-5), property owners who seek just compensation under the Fifth Amendment are not seeking to "proscribe" (i.e., enjoin) takings, and they are not asserting "constitutional violations." Instead, these owners are asserting a federal "right to recover just compensation," the monetary remedy that is "grounded in the Constitution itself."

To put the point another way, the principle that the Fifth Amendment proscribes (only) those takings that are without just compensation leads not to the state procedures requirement but rather to the rule (reiterated in *Monsanto*) that "[e]quitable relief is not available to enjoin an alleged taking of private property for public use . . . when a suit for compensation can be brought against

the sovereign subsequent to the taking." 467 U.S. at 1016, *discussed at supra* p. 11. That is, the "proscribes takings without just compensation" point cited by *Williamson County* is a perfectly good basis for rebuffing property owners who ask federal courts to *enjoin state regulatory programs*; however, it is no basis whatever for rebuffing property owners who ask federal courts to *award just compensation*.

III. The State Procedures Requirement Has Other Defects that Show Its Doctrinal Incoherence.

If *Williamson County*'s state procedures requirement was not correct when it was decided, then it is also defective in additional ways that have come to light in the past two decades. Petitioner has explicated some of those defects. *See* Pet. 11-24. In the following sections, amici discuss three other defects.

A. The Requirement Is Inconsistent with the No-Exhaustion-of-Remedies Rule Governing Other Federal Rights.

The intended effect of *Williamson County*'s state procedures requirement is to remit property owners with what had long been described as "accrued" *federal* claims for just compensation, *Soriano*, 352 U.S. at 275, to *state* courts to pursue remedies under *state* law. This result is anomalous on its face, and it is especially jarring given the Court's long-standing and firm refusal, with respect to *other* federal claims asserted under 42 U.S.C. § 1983, to "require[] exhaustion of state *judicial* . . . remedies, recognizing the paramount role Congress has assigned to the federal courts to protect constitutional rights." *Steffel v. Thompson*, 415 U.S. 452, 472-73 (1974) (emphasis added), *quoted in Patsy v. Board of Regents*, 457 U.S. 496, 500 (1982). In practice, therefore, the state procedures requirement has effectively

caused the Just Compensation Clause, "as much a part of the Bill of Rights as the First Amendment or [the] Fourth Amendment, [to] be relegated to the status of a poor relation," despite protestations to the contrary in *Dolan v. City of Tigard*, 512 U.S. 374, 392 (1994).

The House of Representatives views the state procedures requirement as an "exhaustion" mechanism applying only to claims for just compensation, and it has twice passed bills to eliminate it.[4] The House Judiciary Committee's report on the latter bill made clear that the non-exhaustion provision had as its target *Williamson County*'s state procedures requirement, for the House viewed the requirement as the kind of exhaustion-of-judicial-remedies rule that was *rejected* in *Steffel*, *Patsy*, and many other decisions of this Court. *See* H.R. Rep. No. 106-518, at 13 & n.3 (2000). The committee report explained that the "combined effect of *Williamson County*, and the application of issue and claim preclusion, is to drive out of Federal court virtually all Federal claims for just compensation for takings of private property by local governments." *Id.* at 13. As a result of the state procedures requirement, then, "property rights are procedurally disadvantaged compared to other civil rights." *Id.* (section heading).

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[4] *See* Private Property Rights Implementation Act of 1997, H.R. 1534, 105th Cong., § 2 (adding 28 U.S.C. § 1343(e)(3) to provide that property owners seeking to enforce the Just Compensation Clause pursuant to 42 U.S.C. § 1983 need not "exhaust judicial remedies provided by any State or territory"); Private Property Rights Implementation Act of 2000, H.R. 2372, 106th Cong., § 2 (adding 28 U.S.C. § 1343(e)(4) to provide that claims for just compensation asserted pursuant to § 1983 are "ripe for adjudication even if the party seeking redress does not exhaust judicial remedies provided by any State or territory").

B. The Requirement Is in Practice Ignored by State Courts and by this Court.

If the state procedures requirement truly derives from the "nature" of the federal right to just compensation—as opposed to being merely a "procedural scheme under which claims may be heard in federal courts," *Patsy*, 457 U.S. at 501—then the requirement necessarily governs regardless of the judicial forum in which the federal right is asserted. In other words, under the logic of *Williamson County*, "a property owner cannot claim a violation of the Just Compensation Clause" *even in state court* until he has used the "procedure for seeking just compensation" provided by the state. 473 U.S. at 195. In other words, no *federal* claim for just compensation may be presented to a *state* court until the owner has fully (and unsuccessfully) litigated his state-law claim for compensation (in the state judicial system).

This precept follows unassailably from the state procedures requirement; this precept is also uniformly ignored both by state courts themselves and this Court. As for state courts, amici are aware of none that refuses to adjudicate *federal* claims for just compensation on the ground that they are premature until a property owner has pursued to completion all claims for compensation under *state* law. To the contrary, it is not difficult to cite examples of state judicial systems that will adjudicate federal claims for just compensation *before* state-law compensation claims have been fully litigated.[5]

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[5] *See, e.g., Jacobs Wind Electric Co. v. Department of Transportation*, 626 So. 2d 1333, 1337 (Fla. 1993) (contemplating that a patent holder would assert its claims under the federal Just Compensation Clause *along with* its claims under the state

(continued...)

As for this Court, consider the last two pure regulatory takings cases it has entertained on certiorari to state courts. In *Lucas v. South Carolina Coastal Council*, 505 U.S. 1003, 1009 (1992), the Court observed that following the enactment of the relevant state statute, "Lucas promptly filed suit in the South Carolina Court of Common Pleas, contending that the Beachfront Management Act's construction bar effected a taking of his property without just compensation." Even though the Court postponed its discussion of the merits to address whether Lucas had satisfied *Williamson County*'s "final decision" requirement, *see id.* at 1010-14, the Court was not concerned in the least whether Lucas had also satisfied *Williamson County*'s "state procedures" requirement by litigating to completion whatever state-law claims for compensation he might have had prior to his asserting his federal claim for just compensation.

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[5] (...continued)
analogue thereto and state common law); *Kavanau v. Santa Monica Rent Control Board*, 941 P.2d 851, 855 (Cal. 1997) (observing that the property owner brought a claim for " 'just compensation' in the form of lost rental income and interest" under both "article I, section 19 of the California Constitution and the Fifth Amendment of the United States Constitution"), *cert. denied*, 522 U.S. 1077 (1998); *Mayhew v. Town of Sunnyvale*, 964 S.W.2d 922, 930 (Tex. 1997) (finding ripe the plaintiff's "just compensation takings claims" brought at the same time "under the United States Constitution and Texas Constitution"); *Palazzolo v. State*, 746 A.2d 707, 711 (R.I. 2000) (observing that plaintiff "brought an inverse condemnation action" that asserted "a taking of his property for which he was entitled to compensation pursuant to the United States and Rhode Island Constitutions"), *aff'd in part, rev'd in part*, 533 U.S. 606 (2001).

Likewise, in *Palazzolo v. Rhode Island*, 533 U.S. 606, 611 (2001), the Court observed that following proceedings before the state Coastal Resources Management Council, Palazzolo "sued in state court, asserting the Council's application of its wetlands regulations took the property without compensation in violation of the Takings Clause of the Fifth Amendment." Again, while the Court addressed the final decision requirement at length, *see id.* at 618-26, it gave no attention to the state procedures rule. In contrast to *Williamson County*, the Court surely did not bother to assure itself that, *before* Palazzolo first asserted his federal claim for just compensation, he did indeed "seek compensation through the procedures the State has provided for doing so."

C. The Requirement Invites Disrespect for State Courts by Treating Them as Mere Stations on the Road to Federal Court.

In a letter expressing its (unsuccessful) opposition to passage by the House of a bill eliminating the state procedures requirement, *see supra* note 4 and accompanying text, the Justice Department cited "'a proper respect for State functions'" in contending that "State courts are as capable as Federal courts in adjudicating local land use cases." H.R. Rep. No. 106-518, at 37, 42 (quoting *Younger v. Harris*, 401 U.S. 37, 44 (1971)). An argument like this naturally evokes the decisions of this Court calling for a "proper respect for the ability of state courts to resolve federal questions presented in state-court litigation." *Pennzoil Co. v. Texaco, Inc.*, 481 U.S. 1, 14 (1987). Amici concur with the Department that this respect should influence the Court's thinking about the state procedures requirement. But as set forth below, the requirement in fact invites *dis*respect for state courts and their ability to resolve federal questions.

It has long been recognized that, notwithstanding "the paramount role Congress has assigned to the federal courts to protect constitutional rights," *Steffel*, 415 U.S. at 473, generally "the state and federal courts have concurrent jurisdiction of suits of a civil nature arising under the Constitution and laws of the United States." *Grubb v. Public Utilities Commission*, 281 U.S. 470, 476 (1930); *accord, e.g., Tafflin v. Levitt*, 493 U.S. 455, 459 (1990). Monetary claims under the Just Compensation Clause are within this general rule, and state courts routinely adjudicate such federal claims against state and local governments.

Consider a procedural regime in which both state courts and lower federal courts adjudicate the federal claims for just compensation respectively presented to each. The property owners who agree with the Justice Department's prediction that "State courts are likely to be as sympathetic to local property owners as Federal courts," H.R. Rep. No. 106-518, at 37, will gravitate naturally toward the former; those who disagree, toward the latter. Each court system will develop federal takings law subject to this Court's review and without interference from the other. Such a regime would not only yield more efficient decisionmaking, it would also truly show that "proper respect for ability of state courts to resolve federal questions presented in state-court litigation" enunciated in *Pennzoil Co.*, 481 U.S. at 14.

By contrast, consider the regime created by the state procedures requirement of *Williamson County*. Under that regime, federal courts consider state courts not as parallel departments of a dual sovereign but instead as "hurdles" to be overcome on the road to resolution of claims by federal courts. *E.g., Richardson v. City & County of Honolulu*, 124 F.3d 1150, 1165 (9th Cir.

1997), *cert. denied*, 525 U.S. 871, 921, 1018 (1998); *Eide v. Sarasota County*, 908 F.2d 716, 720-21 (11th Cir. 1990), *cert. denied*, 498 U.S. 1120 (1991). Moreover, federal courts send property owners packing off to state courts to litigate state-law claims they do not wish to pursue and to obtain rulings that may have absolutely no consequence in later federal proceedings. Forcing pointless detours to state courts in order to litigate sideshow issues show affirmative *dis*respect for those courts rather than the requisite proper respect.

CONCLUSION

As the Court has often reiterated, the doctrine of *stare decisis* is "not . . . an inexorable command." *Lawrence*, 539 U.S. at 577 (quoting *Payne v. Tennessee*, 501 U.S. 808, 828 (1991)). It is, instead, "a principle of policy" that must yield when the rationale of a prior decision "does not withstand careful analysis." *Id.* As this brief has shown, the state procedures requirement of *Williamson County* cannot withstand such analysis: it was fashioned in circumstances that warrant no confidence its soundness, and "precedents before and after its issuance contradict its central holding." *Id.* Though state and local governments "rely" on it as a convenient means to exhaust property owners having the temerity to assert federal claims for just compensation, "there has been no individual or societal reliance on [it] of the sort that could counsel against overturning its holding once there are compelling reasons to do so." *Id.*

This last point is crucial, for we may expect a chorus from respondents and their amici regarding how the state procedures requirement is a pillar of Western Civilization and how overruling it will usher in a new Dark Ages. We think this chorus is largely driven by the desire of these governments and their allies to narrow the

substantive scope of takings law. While that desire is understandable, we are confident that all Members of this Court will resist the temptation to treat the state procedures requirement as a stand-in for disputes about the substantive reach of the Just Compensation Clause. Whether that Clause affords broad relief to property owners, narrow relief, or even no relief at all, should not matter here: in accord with "the paramount role Congress has assigned to the federal courts to protect constitutional rights," *Steffel*, 415 U.S. at 473, the answers to that question ought to be resolved in federal court without requiring exhaustion of state-law remedies in state court.

As the Court has repeatedly stated, when "governing decisions are unworkable or are badly reasoned, this Court has never felt constrained to follow precedent." *Seminole Tribe v. Florida*, 517 U.S. 44, 63 (1996) (quoting *Payne*, 501 U.S. at 827). The Court should not feel constrained here: this is truly the "appropriate case" to reconsider—and ultimately overrule—the unworkable, and badly reasoned, state procedures requirement of *Williamson County*.

The petition for writ of certiorari should be granted.

Respectfully submitted.

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No. 07-635

BRUCE PETERS,
Petitioner,
v.
VILLAGE OF CLIFTON, ILLINOIS, ET AL.,
Respondents.

AFFIDAVIT OF SERVICE

I, Patricia Billotte, of lawful age, being duly sworn, upon my oath state that I did, on the 17 day of DECEMBER, 2007, send out from Omaha, NE 2 package(s) containing 3 copies of the MOTION FOR LEAVE TO FILE BRIEF AMICI CURIAE AND BRIEF AMICI CURIAE FOR ELIZABETH J. NEUMONT (AND ALL OTHERS SIMILARLY SITUATED) IN SUPPORT OF PETITIONER in the above entitled case. All parties required to be served have been served U.S. Mail, no less than first class postage prepaid. Packages were plainly addressed to the following:

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Subscribed and sworn to before me this 17 day of DECEMBER, 2007.
I am duly authorized under the laws of the State of Nebraska
to administer oaths.
20234

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State of Nebraska
My Commission Expires Apr 9, 2010

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December 17, 2007

Hon. William K. Suter
Clerk of the Court
Supreme Court of the United States
1 First Street, N.E.
Washington, D.C. 20543

Re: No. 07-635
Peters v. Village of Clifton, Illinois

Dear Mr. Suter:

I write regarding the Motion for Leave to File Brief Amici Curiae and Brief Amici Curiae for Elizabeth J. Neumont (and All Others Similarly Situated) in Support of Petitioner, filed today via Cockle Printing Company.

As required by this Court's Rule 33.1(h), I certify that the document contains 5,994 words, excluding the parts of the document that are exempted by Supreme Court Rule 33.1(d).

I declare under penalty of perjury that the foregoing is true and correct.

Executed on December 17, 2007.

Eric Grant
Counsel for Amici Curiae Elizabeth J. Neumont
(and All Others Similarly Situated)