No. 23-1103

In The
Supreme Court of the United States

SAWTOOTH MOUNTAIN RANCH, LLC, ET AL.,

Petitioners,

v.

UNITED STATES FOREST SERVICE, ET AL.,

Respondents.

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

BRIEF AMICUS CURIAE OF PACIFIC LEGAL FOUNDATION, NFIB LEGAL CENTER, AND OWNERS' COUNSEL OF AMERICA IN SUPPORT OF PETITIONERS

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QUESTIONS PRESENTED

This amicus curiae brief addresses the first two of three questions presented by the Petitioners to this Court:

1. Whether equitable tolling is available for statutes of limitation, highlighting a conflict between *Boechler, P.C. v. Commissioner*, 596 U.S. 199, 209 (2022), holding that such relief is "presumptively" available, and the earlier decisions in *United States v. Beggerly*, 524 U.S. 38, 49 (1998), and *Block v. North Dakota*, 461 U.S. 273, 287 (1983), holding that the statute of limitations must be "strictly" applied.

2. Whether the only remedy for a regulatory taking is cash payment, a conclusion of the Ninth Circuit that conflicts with recent decisions of this Court, like *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021); *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987); *Dolan v. City of Tigard*, 512 U.S. 374 (1994); and *Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528 (2005), holding that takings relief is not limited to compensation but can be declaratory or injunctive, depending on the circumstances.

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IDENTITY AND INTEREST OF AMICI CURIAE[1]

Pacific Legal Foundation (PLF) is a nonprofit, tax-exempt corporation organized for the purpose of litigating matters affecting the public interest in private property rights, individual liberty, and economic freedom. Founded 50 years ago, PLF is the most experienced legal organization of its kind. PLF attorneys have participated as lead counsel in numerous landmark United States Supreme Court cases generally in defense of the right to make reasonable use of property and the corollary right to obtain just compensation when that right is infringed. *See, e.g.*, *Cedar Point Nursery v. Hassid*, 594 U.S. 139 (2021); *Pakdel v. City and Cnty. of San Francisco*, 594 U.S. 474 (2021); *Knick v. Twp. of Scott*, 588 U.S. 180 (2019); *Murr v. Wisconsin*, 582 U.S. 383 (2017); *Koontz v. St. Johns River Water Mgmt. Dist.*, 570 U.S. 595 (2013); *Palazzolo v. Rhode Island*, 533 U.S. 606 (2001); *Suitum v. Tahoe Reg'l Plan. Agency*, 520 U.S. 725 (1997); *Nollan v. California Coastal Comm'n*, 483 U.S. 825 (1987). PLF also represented the Petitioner in *Wilkins v. United States*, 598 U.S. 152 (2023), which involved the Quiet Title Act's statute of limitations.

National Federation of Independent Business Small Business Legal Center, Inc. ("NFIB Legal Center") is a nonprofit, public interest law firm

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[1] Pursuant to Rule 37.2, Amici Curiae provided timely notice to all parties. Pursuant to Rule 37.6, Amici Curiae affirm that 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, their members, or their counsel made a monetary contribution to its preparation or submission.

established to provide legal resources and be the voice for small businesses in the nation's courts through representation on issues of public interest affecting small businesses. It is an affiliate of the National Federation of Independent Business, Inc. (NFIB), which is the nation's leading small business association. NFIB's mission is to promote and protect the right of its members to own, operate, and grow their businesses. NFIB represents, in Washington, D.C., and all 50 state capitals, the interests of its members. NFIB Legal Center takes interest in this case because equitable tolling gives courts much-needed discretion, preventing agencies from hiding wrongdoing behind a layer of clerical technicalities. As a matter of justice, small business owners must have the chance to bring claims when they discover a legal injury. Further, monetary damages may be insufficient given the character of a taking. Small businesses should be able to have their day in court and stop the government from despoiling their land.

Owners' Counsel of America (OCA) is an invitation-only national network of the most experienced eminent domain and property rights attorneys. They have joined together to advance, preserve, and defend the rights of private property owners, and thereby further the cause of liberty, because the right to own and use property is "the guardian of every other right," and the basis of a free society. *See* James W. Ely, *The Guardian of Every Other Right: A Constitutional History of Property Rights* (2d ed. 1998). As the lawyers on the front lines of property law and property rights, OCA OCA brings unique perspective to this case. OCA is a nonprofit 501(c)(6) organization sustained solely by its members. Only one member lawyer is admitted from each state. Since its founding, OCA has sought to use

its members' combined knowledge and experience as a resource in the defense of private property ownership, and OCA member attorneys have been involved in landmark property law cases in nearly every jurisdiction nationwide. Additionally, OCA members and their firms have been counsel for a party or *amicus* in many of the property cases this Court has considered in the past forty years, including most recently *Koontz*, 570 U.S. 595, and *Arkansas Game and Fish Comm'n v. United States*, 568 U.S. 23 (2012). OCA members have also authored and edited treatises, books, and law review articles on property law and property rights.

INTRODUCTION AND SUMMARY OF ARGUMENT

The Quiet Title Act, 28 U.S.C. §§ 1346(f), 2409a, allows "citizen[s] involved in a title dispute with the Government to have [their] day in court . . . ." S. Rep. No. 92-575, at 2 (1971). To that end, the Quiet Title Act allows for a property owner to file a suit against the government "to adjudicate a disputed title to real property in which the United States claims an interest . . . ." 28 U.S.C. § 2409a(a).

A quiet title action must be brought within twelve years after "the plaintiff or his predecessor in interest knew or should have known of the claim of the United States." 28 U.S.C. § 2409a(g). The Quiet Title Act's statute of limitations thus incorporates the "discovery rule." *See* 54 C.J.S. *Limitations of Actions* § 136 (2023) (explaining discovery rule). The discovery rule is an equitable doctrine and, in the context of the Quiet Title Act, "effectively allow[s] for equitable tolling." *United States v. Beggerly*, 524 U.S. 38, 48 (1998).

But here, the Ninth Circuit failed to apply any equitable considerations in holding that Petitioners filed their suit out of time. Petitioners' Appendix (Pet. App.) at 6. Relying on other language in *Beggerly* that "[e]quitable tolling of the already generous statute of limitations incorporated in the [Quiet Title Act] . . . is incompatible with the Act," 524 U.S. at 49, the Ninth Circuit summarily affirmed the dismissal of Petitioners' claims, Pet. App. at 6. This Court should grant the Petition to address *Beggerly*'s seemingly contradictory language about equitable tolling under the Quiet Title Act.

The Petition should also be granted to resolve the Ninth Circuit's holding about what relief is available for a takings claim. This Court has long and consistently held that just compensation is not the sole remedy available under the Takings Clause, asserting so both explicitly, *see Duke Power Co. v. Carolina Env. Study Grp., Inc.*, 438 U.S. 60, 71 n.15 (1979), and implicitly. *See Cedar Point*, 594 U.S. at 145. Takings claims can be raised as a defense against government suit, *see Kaiser Aetna v. United States*, 444 U.S. 164, 170–71 (1970), or simply as actions for declaratory and injunctive relief. *See Lingle v. Chevron U.S.A. Inc.*, 544 U.S. 528, 533 (2005). Unfortunately, lack of clarity in some of this Court's decisions, namely *Knick*, 588 U.S. at 195, and *First English Evangelical Lutheran Church v. County of Los Angeles*, 482 U.S. 304, 321 (1987), has resulted in decisions like the one below, where the Ninth Circuit dismissed the Ranchers' inverse condemnation claim because it thought monetary just compensation is the *only* remedy available under the Takings Clause. This misunderstanding of this Court's takings and standing precedents is in dire need of correction if Americans are to be secure in their property.

ARGUMENT

I. THIS COURT SHOULD GRANT THE PETITION TO CLARIFY AND, IF NECESSARY, OVERTURN THE HOLDING IN *BEGGERLY*

A. This Court Should Clarify Its Statement That the Quiet Title Act "Effectively Allows for Equitable Tolling"

In *United States v. Beggerly*, this Court stated that "the [Quiet Title Act], by providing that the statute of limitations will not begin to run until the plaintiff 'knew or should have known of the claim of the United States,' has already effectively allowed for equitable tolling." 524 U.S. at 48. In support of that statement, this Court cited *Irwin v. Department of Veterans Affairs* for the proposition that this Court has allowed equitable tolling in situations "where the claimant has actively pursued his judicial remedies by filing a defective pleading during the statutory period, or where the complainant has been induced or tricked by his adversary's misconduct into allowing the filing deadline to pass." *Beggerly*, 524 U.S. at 48 (citing *Irwin*, 498 U.S. 89, 96 (1990).

Given that the Quiet Title Act "effectively allow[s] for equitable tolling," the Court held that "extension of the statutory period by additional equitable tolling would be unwarranted." *Beggerly*, 528 U.S. at 49. In short, this Court recognized that courts should apply equitable considerations when determining whether a

Quiet Title Act claim is timely, but recognized that there were limits to that consideration.[2]

But here, the Ninth Circuit focused only on the latter language in *Beggerly* and applied no equitable considerations when determining when the statute of limitations began to run. Pet. App. at 6. The Ninth Circuit focused solely on when the property owners knew that the federal government had a right to construct a public trail within the conservation easement at issue. *Id.* But that is not the issue in this case, and that was not the dispute that led the property owners claim to accrue.

The landowners here allege that through its words, policies, and actions, the federal government implied that it would allow the public to use a preexisting hiking trail within the easement boundary. Pet. for Writ of Cert. at 4–7. And until 2014, the federal government never expressed any intent to build—or any belief that it had the right to build—a paved commuter route along the conservation easement. *Id.*

This is the type of situation where a court should apply equitable considerations to decide when a quiet title claim accrued. The purpose of the Quiet Title Act is to allow property owners to resolve disputes with the federal government. S. Rep. No. 92-575, at 2 (1971) (recommending passing the Quiet Title Act because it will allow "citizen[s] involved in a title dispute with the Government to have [their] day in

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[2] Indeed, in its briefing in *Beggerly*, the government recognized the equitable nature of the Quiet Title Act's statute of limitations. Pet'r's Br. at 28, *United States v. Beggerly*, 524 U.S. 38 (1998) (No. 97-731) ("The QTA's statute of limitations therefore has an express 'discovery rule' that already incorporates equitable considerations.").

court . . . .”). The Quiet Title Act’s statute of limitations was not intended to allow the government to pull a bait-and-switch to avoid litigating whether it got more than it bargained for. *See Beggerly*, 524 U.S. at 48; *see also id.* at 49–50 (Stevens, J., concurring).

The line between the Quiet Title Act’s discovery rule and equitable tolling is murky. *Cf. Cada v. Baxter Healthcare Corp.*, 920 F.2d 446, 450–51 (7th Cir. 1990) (explaining the difference between when a claim accrues under the discovery rule and when it is tolled by equitable tolling). Indeed, courts often confuse the discovery rule, equitable tolling, and equitable estoppel, *id.* at 451—the latter of which this Court has said might apply to the Quiet Title Act’s statute of limitations, *Wilkins*, 598 U.S. at 164. But that confusion highlights the need for this Court to clarify the holding in *Beggerly*.

For most other statutes of limitations, the differences between these doctrines will have little practical effect on whether a claim can move forward. In other cases, courts do not need to parse which equitable doctrine applies to the facts of each case, and can allow a case to move forward when equitable considerations counsel the court to reach a decision on the merits.

But because of *Beggerly*, courts are required in Quiet Title Act cases to parse the various equitable doctrines that apply to the statute of limitations. And, as with the Ninth Circuit here, courts will often read *Beggerly* to require them to not consider *any* of the equities when determining whether a claim was timely filed.

But *Beggerly* itself recognized that equitable considerations play a role in determining when a Quiet Title Act claim accrues. 524 U.S. at 48. And for good reason. When a court dismisses a Quiet Title Act case under statute of limitations grounds, no title is quieted. *Block v. N. Dakota ex rel. Bd. of Univ. & Sch. Lands*, 461 U.S. 273, 291 (1983). Instead, the property dispute continues, but can only be resolved through some other process. *Id.* at 291–92.

In the interest of resolving property disputes, this Court should grant the Petition to clarify its holding in *Beggerly*. Specifically, this Court should clarify that *Beggerly* does not hold that courts are not allowed to consider any equities when determining whether a Quiet Title Act case was timely filed.

B. The Ninth Circuit's Misapplication of the Quiet Title Act's Statute of Limitations Demonstrates Why This Court Should Overturn *Beggerly* and Hold That the Quiet Title Act Allows for Equitable Tolling

Moreover, to avoid further confusion about the Quiet Title Act's statute of limitations, this Court should go beyond just clarifying *Beggerly*'s holding and grant the Petition to overturn it. The *Beggerly* court's analysis of whether equitable tolling is available was relatively short and it overlooked important aspects of the Quiet Title Act and statutes of limitations generally. In short, the Court's statement that the Quiet Title Act's text overcomes the presumption in favor of equitable tolling was incorrect, inconsistent with this Court's other Quiet Title Act cases, and—as demonstrated above—has

caused needless confusion that prevents property owners from vindicating their rights.

The first rationale *Beggerly* stated for not allowing equitable tolling was that the Quiet Title Act "has already effectively allowed for equitable tolling." 524 U.S. at 48. But, as stated above, the discovery rule is a different concept from equitable tolling, and statutes often allow for both (as well as equitable estoppel). *Cada*, 920 F.2d at 450–51. The various doctrines are "background principle[s] against which Congress drafts limitations periods" and this Court "understand[s]" that Congress does not "alter that backdrop lightly[.]" *Boechler, P.C. v. Comm'r of Internal Revenue*, 596 U.S. 199, 209 (2022). But in *Beggerly*, this Court did assume Congress altered the background principles lightly, and held that Congress eliminated one equitable doctrine because it allowed another in the statute of limitations.

Beggerly's second rationale was that the Quiet Title Act "deals with ownership of land" and thus "[i]t is of special importance that landowners know with certainty what their rights are, and the period during which those rights may be subject to challenge." 524 U.S. at 49. But this statement is directly contradicted by a previous case. *Block*, 461 U.S. at 291.

As this Court said in *Block*, "[t]he statute [of limitations] limits the time in which a quiet title suit against the United States can be filed; but . . . [it] does not purport to effectuate a transfer of title." 461 U.S. at 291. Thus, a dismissal under the statute of limitations "does not quiet title to the property in the United States" and "[n]othing prevents the claimant from continuing to assert his title, in hope of inducing the United States to file its own quiet title suit,

in which the matter would finally be put to rest on the merits." *Id.* at 291–92.

Contrary to *Beggerly*'s statement, certainty of title suggests that equitable tolling should be allowed. Prematurely dismissing a quiet title case does not give landowners certainty of what their rights are and instead "[t]he title dispute remains unresolved." *Block*, 461 U.S. at 291. Allowing a case to be resolved on the merits is the only way to ensure certainty. *Beggerly*'s rationale was based on an incorrect premise that warrants revisiting the holding.

Finally, sovereign immunity does not provide a justification to hold that the Quiet Title Act does not allow for equitable tolling. As this Court said in *Irwin*, "[o]nce Congress has made such a waiver" of sovereign immunity, "we think that making the rule of equitable tolling applicable to suits against the Government, in the same way that it is applicable to private suits, amounts to little, if any, broadening of the congressional waiver." 498 U.S. at 95.

Indeed, the concept of sovereign immunity itself is at odds with the Quiet Title Act's purpose, which Congress enacted to allow citizens to resolve title disputes with the government. S. Rep. No. 92-575, at 2 (1971). As the Senate Committee on Interior and Insular Affairs stated when it recommended passing the Quiet Title Act, "[s]overeign immunity or the infallibility of the Crown, so to speak, became imbedded in the common law of England and so came into our American law," but "this principle is not appropriate where the courts are established . . . to serve the people." *Id.* at 1. Thus, instead of interpreting the Quiet Title Act's waiver of sovereign immunity strictly against property owners, this Court

should interpret the Quiet Title Act in a manner that furthers Congress's intention that courts serve the people by giving them their day in court.

Moreover, this Court has stated that sovereign immunity considerations are at their greatest when they involve suits for money damages. *See, e.g.*, *Dep't of Agric. Rural Dev. Rural Hous. Serv. v. Kirtz*, 601 U.S. 42, 48 (2024) ("The United States, as sovereign, is generally immune from suits seeking money damages."). This is understandable because suits for money damages are the only suits that arguably have a textual basis in the Constitution, as the Appropriations Clause gives Congress the power to expend funds. *Off. of Pers. Mgmt. v. Richmond*, 496 U.S. 414, 424 (1990) ("For the particular type of claim at issue here, a claim for money from the Federal Treasury, the Clause provides an explicit rule of decision. Money may be paid out only through an appropriation made by law."); *see also Mowrer v. United States Dep't of Transp.*, 14 F.4th 723, 747 (D.C. Cir. 2021) (Randolph, J., concurring) ("As to federal sovereign immunity, the Constitution says nothing.").

But the Quiet Title Act involves no transfer of money or property from the federal government. The very nature of a quiet title claim is that the claimant already owns the property, and the federal government is unlawfully asserting its right over it. If one succeeds in a quiet title suit, the government does not transfer property to that person. Instead, the court merely recognizes the rightful owner of the property at issue. Therefore, the concerns with waiving sovereign immunity for suits for money damages are not present with quiet title actions.

Beggerly's holding was based on incorrect premises and prevents property disputes from being resolved. This Court should grant the Petition to overturn *Beggerly* and hold that the Quiet Title Act's statute of limitations can be equitably tolled.

II. THIS COURT SHOULD GRANT THE PETITION TO CLARIFY WHAT REMEDIES ARE AVAILABLE UNDER THE TAKINGS CLAUSE

A federal court has a "virtually unflagging" "obligation to hear and decide cases within its jurisdiction." *Susan B. Anthony List v. Driehaus*, 573 U.S. 149, 167 (2014). The Ninth Circuit neglected that obligation when it refused to exercise jurisdiction over Sawtooth's takings claim for lack of a request for monetary compensation, despite the unavailability of an adequate monetary remedy and decades of precedent from this Court accepting jurisdiction over non-monetary takings claims. This Court has consistently exercised jurisdiction over takings cases where the plaintiffs sought only injunctive or declaratory relief. *See, e.g.*, *Kaiser Aetna*, 444 U.S. 164; *Duke Power*, 438 U.S. 60*; Nollan*, 483 U.S. 825; *Dolan v. City of Tigard*, 512 U.S. 374 (1994); *Babbitt v. Youpee*, 519 U.S. 234 (1997); *Lingle*, 544 U.S. 528; *Horne v. Dep't of Agric.*, 576 U.S. 350 (2015) (*Horne II*); *Cedar Point*, 594 U.S.139.

It has generally done so without controversy or even comment. *But see Duke Power*, 438 U.S. at 95–96 (Rehnquist, J., concurring in the judgment). Nevertheless, the status of non-monetary takings claims in the lower courts remains murky, as can be seen here with the Ninth Circuit incorrectly asserting that injunctive and declaratory relief are *never*

appropriate remedies under the Takings Clause and that only monetary claims for just compensation confer federal courts with jurisdiction. Intervention by this Court is necessary.

A. This Court Has Jurisdiction to Review the Ranchers' Takings Claim

Just compensation in the form of monetary damages via a Tucker Act claim in the Court of Federal Claims is certainly the usual form of relief for federal takings, and the kind courts are most comfortable with providing. But it is not, and has never been, the sole remedy available under the Takings Clause. The right to not have one's property taken by the government without just compensation—like those others protected in the Bill of Rights—is "self-executing," *United States v. Clarke*, 445 U.S. 253, 257 (1980), and thus cannot be limited by a mere statute like the Tucker Act. To the extent that monetary relief is inadequate or otherwise unavailable and injunctive or declaratory relief are necessary to prevent an uncompensated taking, they are and should be available.

Indeed, declaratory and injunctive relief for federal takings predate the availability of monetary just compensation by decades. As this Court explained in *Knick*, 588 U.S. at 200, legislation providing a cause of action for monetary compensation of a federal taking of private property for public use did not exist prior to the 1870s (the Tucker Act, 28 U.S.C. § 1491, was not enacted until 1887). "Antebellum courts, which had no means of compensating a property owner for his loss, had no way to redress the violation of an owner's Fifth Amendment rights other than ordering the government to give him back his

property." *Id.* at 200 (citing *Callender v. Marsh*, 18 Mass. 418, 430–31 (1823) ("[I]f by virtue of any legislative act the land of any citizen should be occupied by the public . . . , without any means provided to indemnify the owner of the property, . . . because such a statute would be directly contrary to the [Massachusetts Takings Clause]; and as no action can be maintained against the public for damages, the only way to secure the party in his constitutional rights would be to declare void the public appropriation.")). For roughly the Republic's entire first century, injunctions were not only a type of remedy available under the Takings Clause, they were essentially the *only* remedy available.

Here, the Ranchers are challenging the USFS's actions as unconstitutional, and the government can choose to either pay just compensation for what was taken, or it can acknowledge the unconstitutional character of what it was attempting to do and return the property that was taken. Both outcomes make the Ranchers whole under the Takings Clause, in theory, but only injunctive and declaratory relief can protect the (potentially uncompensable) conservation value of the local environment as protected in the Sawtooth Mountain Recreation Act, 16 U.S.C. § 460aa et seq.

B. This Court Regularly Exercises Jurisdiction Over Takings Cases Where No Monetary Relief Has Been Sought

Cases implicating the Takings Clause but where the plaintiff never asserted a monetary claim for just compensation come before this Court on a fairly regular basis, and rarely does the question of jurisdiction even merit discussion, let alone

controversy. The Court exercised jurisdiction over non-monetary takings claims without comment in several notable and highly precedential cases. *See, e.g.*, *Kaiser Aetna*, 444 U.S. 164 (finding a taking when takings claim was raised as defense to suit against property owner by Army Corps of Engineers, where property owner only sought an injunction prohibiting the government from allowing public access); *Nollan*, 483 U.S. 825 (finding a taking even though the property owners did not seek damages or even file inverse condemnation claim, but instead brought an action for a writ of mandate against the California Coastal Commission asking the court to strike unconstitutional conditions inserted by the Commission into the property owner's building permit); *Dolan*, 512 U.S. 374 (finding a taking under similar circumstances as in *Nollan*, where property owner only sought injunction reversing variance decision, not monetary damages); *Babbitt,* 519 U.S. at 242 (finding a taking where property owner filed taking claim requesting only declaratory and injunctive relief). The Court even did so unanimously in *Lingle*, 544 U.S. 528 (finding a taking in case where property owner brought suit seeking a declaration that a rent cap ordinance was an unconstitutional taking and an injunction against application of the cap to its property); *Horne II*, 576 U.S. at 367–68 (ruling in favor of appellant property owners, stating that they could "raise a takings-based defense to the fine levied against them" and disclaiming the argument that only a suit for just compensation under the Tucker Act is sufficient to state a claim under the Takings Clause).

And it is clear that this is no accident or a mere product of ignoring issues not explicitly raised by

parties who would prefer a decision on the merits rather than a dissatisfying dismissal on standing grounds, but a deliberate choice on this Court's part to accept takings cases raising claims other than for money damages. Dissenting Justices have occasionally broached the topic, but rarely with much support and never with any particular enthusiasm. *See Cedar Point*, 594 U.S. at 179 ("[T]ouch[ing] briefly on the remedies, which the majority does not address," Justice Breyer acknowledged that the plaintiffs sought "only injunctive and declaratory relief." He brought this up not to disclaim jurisdiction, however, but merely to state that he thought California should be able to foreclose injunctive relief on remand by providing compensation.); *Duke Power*, 438 U.S. at 71 n.15 (responding to Justice Rehnquist's assertion in his concurrence that the Court lacked jurisdiction because the federal takings suit did not originate in the Court of Federal Claims by stating that Court of Federal Claims has exclusive jurisdiction over monetary claims against the federal government, not takings claims *per se*. The Court then reaffirmed the right of property owners threatened with a taking "to seek a declaration of the constitutionality of the disputed governmental action before potentially uncompensable damages are sustained.").

Unfortunately, while this Court has consistently—and largely silently—exercised its jurisdiction over non-monetary takings claims, it has sometimes failed to speak with clarity on the occasions where it has addressed the issue explicitly, allowing lower courts to misinterpret its finality jurisprudence.

For example, in *First English*, 482 U.S. at 321, this Court reaffirmed the position it had outlined in *Kaiser*

Aetna and *Duke Power* that the federal district courts have jurisdiction over takings claims seeking declaratory or injunctive relief as well as those claims seeking just compensation, while also expanding on the unconstitutionality of a government attempting to "relieve it[self] of the duty to provide compensation for the period during which the taking was effective." There, the government attempted to argue that, since the offending ordinance had been invalidated, it was relieved of the responsibility of paying just compensation. The Court responded that a temporary taking is still a taking, and that "[i]nvalidation of the ordinance . . . is not a sufficient remedy to meet the demands of the Just Compensation Clause," *id.* at 319, affirming by implication that it is *a* remedy available. Unfortunately, the Ninth Circuit below appears to have twisted this language—originally a check on government power intended to expand availability of takings remedies to injured property owners—to mean that just compensation is the *only* remedy available under the Takings Clause.

The Court's lack of clarity in *Knick v. Township of Scott* is similarly problematic. In *Knick*, this Court stated that "[e]quitable relief is not available to enjoin an alleged taking of private property for a public use, duly authorized by law, when a suit for compensation can be brought against the sovereign subsequent to the taking," *Knick*, 588 U.S. at 195, while also rejecting the argument that, just because a fully compensated plaintiff no longer has a takings claim does not mean that no taking took place. *Id.* The first half of the quoted statement has been warmly received by courts such as the Ninth Circuit, but the second half is often ignored. But the Takings Clause does not only require just compensation for public

takings. As this Court recognized in *Knick*, it is also an active prohibition placed on the government from taking any property in the first place that is not "duly authorized by law" and that it has not paid for. *Knick* also specifies that equitable relief is only unavailable *when adequate monetary relief is*. Here, no amount of financial compensation, even if available, would adequately compensate the Ranchers for the loss of the unique conservation values of their property.

CONCLUSION

This Court should grant the petition.

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Respectfully submitted,

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