

No. 24-755

In the
Supreme Court of the United States

MOLLIE AND MICHAEL SLAYBAUGH,
Petitioners,

v.

RUTHERFORD COUNTY, TENN., ET AL.,
Respondents.

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

**BRIEF OF AMICUS CURIAE ANTHONY
BANASZAK IN SUPPORT OF PETITIONERS**

PHILIP L. ELLISON
*Counsel of Record
for Amicus Curiae*
OUTSIDE LEGAL COUNSEL PLC
*530 West Saginaw St
Hemlock, MI 48626
(989) 642-0055
pellison@olcplc.com*

TABLE OF CONTENTS

TABLE OF AUTHORITIES	<i>ii</i>
INTEREST OF AMICUS CURIAE	1
SUMMARY OF THE ARGUMENT.....	1
BACKGROUND.....	4
ARGUMENT	5
CONCLUSION.....	8

TABLE OF AUTHORITIES

Cases

<i>Armstrong v. United States</i> , 364 U.S. 40 (1960)	2, 6
<i>Baker v. City of McKinney</i> , No. 23-1363, 2024 WL 4874818 (U.S. Nov. 25, 2024)	8
<i>Baker v. City of McKinney</i> , 84 F.4th 378 (5th Cir. 2023)	3
<i>City of New York v. Lord</i> , 17 Wend 285 (N.Y. 1837)	7
<i>Knick v. Twp. of Scott</i> , 588 U.S. 180 (2019)	2
<i>Lech v. Jackson</i> , 791 F. App'x 711 (10th Cir. 2019).....	3
<i>Steele v. City of Houston</i> , 603 S.W.2d 786 (Tex. 1980)	6
<i>Wegner v. Milwaukee Mut. Ins. Co.</i> , 479 N.W.2d 38 (Minn. 1991).....	7

Constitutional Provisions

U.S. Const. amend. V	2
----------------------------	---

INTEREST OF AMICUS CURIAE¹

Amicus curiae Anthony Banaszak is a private citizen and landlord who suffered the same fate as Mollie and Michael Slaybaugh. A home he owned was damaged and destroyed by a Michigan SWAT team looking to arrest a senior citizen tenant who refused to be served court papers. The federal takings case is pending in the United States District Court for the Eastern District of Michigan. Banaszak has an important yet self-interested reason for supporting the Slaybaugh's petition before this Court. He seeks what the Fifth Amendment's Takings and Just Compensation Clauses have promised him. Absent correction by this Court, the Sixth Circuit's *Slaybaugh* decision destroys his case from being successful in his local federal district court.

SUMMARY OF THE ARGUMENT

Anthony Banaszak from Michigan and the Slaybaughs from Tennessee are innocent owners of residential property from states within the Sixth Circuit. Despite being several hundred miles apart and having never met, they suffer from the same legal fate. Police officers and government agents decided it

¹ In compliance with Rule 37.6, no counsel for a party authored the brief in whole or in part. No party, counsel for a party, or any person other than amicus curiae and their counsel made a monetary contribution intended to fund the preparation or submission of the brief.

was critically important to arrest certain criminal suspects and, to effectuate such, destroyed these innocent owners' homes to fulfill that public necessity. But the Sixth Circuit's decision below means that these innocent owners, and not the destructive governments, are solely responsible to bear costly burdens when police arrest others in furtherance of the public need. That is wrong.

The Sixth Circuit's decision below lacks the fairness and justice this Court suggested should already exist. Yes, sometimes private property owners have to suffer the unfortunate indignity of the destruction of their private property for the public good, but they should never be required to foot the bill that should instead "be borne by the public as a whole." *Armstrong v. United States*, 364 U.S. 40, 49 (1960).

Federal appellate court after federal appellate court has refused to apply the plain-text protection the Fifth Amendment expressly promises – payment of just compensation for any private property taken for public use. U.S. Const. amend. V. That is exactly what happened to the Slaybaughs and Banaszak – they had their private property pressed into public service. Just compensation should be immediately required. *Knick v. Twp. of Scott*, 588 U.S. 180, 192 (2019) ("a property owner acquires an irrevocable right to just compensation immediately upon a taking" "[b]ecause of 'the self-executing character' of the Takings Clause 'with respect to compensation.'").

The time for a correction by this Court is sorely needed. The Tenth Circuit got it outright wrong in *Lech v. Jackson*, 791 F. App'x 711 (10th Cir. 2019). The Fifth Circuit went astray in *Baker v. City of McKinney*, 84 F.4th 378 (5th Cir. 2023). The Third, Seventh, and Federal Circuits deferred incorrectly to the faux notion of police power superiority. See Petition for Writ of Certiorari, *Baker v. City of McKinney*, No. 23-1363, 2024 WL 3293358, at *7-13 (U.S. June 28, 2024) (explaining circuit split). Now the Sixth Circuit has misframed the true nature of the constitutional protection leaving the Slaybaughs (and, by extension, Banaszak) as innocent owners with their private property destroyed for a public purpose without compensation. How the Takings Clause applies when the government destroys property pursuant to its police power is an important question that has percolated unanswered by this Court long enough. The trial court in Banaszak's pending case within the Eastern District of Michigan is awaiting this Court's decision on this petition. Denial of this petition to correct the Sixth Circuit's published decision means the automatic death-knell to Banaszak's pending federal claims as well as countless others in this and those other circuits. But it will be more than just Banaszak who benefits from this Court properly interpretating and correctly applying the protections of the Fifth Amendment for these types of circumstances. This Court's intervention is warranted.

BACKGROUND

Plaintiff Anthony Banaszak owned a subdivided house in Bay City, Michigan where septuagenarian Harold Nielsen lived in Apartment No. 3. On October 10, 2022, Nielsen threatened a process server and an arrest warrant was later issued. Two weeks later, officers were dispatched to assist the process server who was again attempting to serve court papers. Before arriving on scene, one of the officers ran Nielsen through law enforcement database and it came back with the outstanding felony warrant due to the events of October 10. Massive backup was called into action.

When attempts were made to take Nielsen into custody, he refused to surrender voluntarily. The front door of his individual apartment was barricaded with junk. So police officers started spraying tear gas into the interior of the apartment. When that did not work, a SWAT team was called and pandemonium ensued.

SWAT members began destroying Banaszak's house to try to force Nielsen out from his individual apartment. Round after round after round of highly noxious chemical irritants were wildly and haphazardly shot into the house without regards to their need or effectiveness. Flash bangs along with numerous rounds of "pepperballs" and other projectiles were deployed. Two small BearCat tanks

were also deployed that rammed a portion of a wall and various windows. Massive destruction resulted.

In the end, walls, windows, and other structures were destroyed while dispersed tear gas, pepper-balls, and activated highly noxious chemical irritants poisoned the property. The damage was extensive. When Nielsen was finally arrested, law enforcement simply packed up and left. To this day, the government refuses to pay for the private property that was necessarily pressed into public service to aid in the arrest of the largely deaf septuagenarian.

Banaszak sued in federal court and his case is currently stayed pending the outcome of the appellate litigation in this case. Absent correction, the Sixth Circuit has effectively ended the case faster than Nielsen was arrested in the destructive Bay City, Michigan standoff.

ARGUMENT

If a SWAT team causes extensive destruction to an innocent owner's house while trying to apprehend a criminal suspect, who pays for the damage caused when accomplished without the blessing of the homeowner? It should not be the innocent homeowner. When law enforcement causes more than de minimis destruction to private property while enforcing public laws, forcing innocent property owners to shoulder the expense and cost of destruction alone is, frankly stated, unfair. Our

Constitution was “designed to bar Government from forcing some people alone to bear public burdens which, in all fairness and justice, should be borne by the public as a whole.” *Armstrong*, 364 U.S. at 49. Yet that is not how federal appellate courts have viewed it. Using a slew of diverse rationales, law enforcement are permitted to continue their policies of “destroy-and-dash.” The Slaybaugh’s petition should be granted to end the unconscionable practice for good. If it was important enough to destroy hundreds of thousands of dollars of private property to arrest a criminal suspect, then the public, not the unfortunate homeowner, should foot the bill.

This concept is not novel or foreign. The highest courts of several states have reached this same reasoned conclusion. The Texas Supreme Court confirmed that when the Houston police caused partial destruction of a home and belongings while attempting to recapture three escaped convicts who had taken refuge in the house, it was a taking. *Steele v. City of Houston*, 603 S.W.2d 786 (Tex. 1980). Observing that “uncompensated governmental taking of property was unlawful [even] before Magna Carta,” *Steele* explained “the destruction of the property as a means to apprehend escapees is a classic instance of police power exercised for the safety of the public and the innocent third parties are entitled by the Constitution to compensation for their property” damaged as related thereto. *Id.* at 789, 793.

In Minnesota, a city SWAT team severely damage a homeowner's house with tear gas, broke numerous windows, and deployed flash-bang grenades. The Minnesota Supreme Court held "where an innocent third party's property is damaged by the police in the course of apprehending a suspect, that property is damaged within the meaning of the constitution" and "the City must reimburse [the homeowner] for the losses sustained." *Wegner v. Milwaukee Mut. Ins. Co.*, 479 N.W.2d 38, 41-42 (Minn. 1991). It explained that "the imposition of such a burden on the innocent citizens of this state would square with the underlying principles of our system of justice." *Id.* at 42.

Nearly two hundred years ago in *City of New York v. Lord*, 17 Wend 285 (N.Y. 1837), New York's highest court opined that while the destruction of a building was needed to deal with a fire, compensation was required because "houses may be pulled down, or bulwarks raised for the preservation and defence (sic) of the country, without subjecting the persons concerned to an action, the same as pulling down houses in time of fire; and yet these are common cases where the sufferers would be entitled to compensation under the Fifth Amendment. *Id.* at 291.

When history, tradition, common sense, general fairness, and justice all align, this Court should accept the invitation to correct the jurisprudence mis-made by the wayward circuits across the country.

Members on this Court have correctly observed what the recourse should be when the government destroys property pursuant to its police power is an important (and complex) question. *Baker v. City of McKinney*, No. 23-1363, 2024 WL 4874818, at *2 (U.S. Nov. 25, 2024) (Sotomayor and Gorsuch, JJ., statement respecting the denial of certiorari). That is true. But it was also suggested there would be benefits from further percolation prior to this Court's intervention. Yet in one fashion or another, the Third, Fifth, Sixth, Seventh, Tenth, and Federal Circuits have already chimed in against property owner victims – with no consensus on the appropriate analysis or constitutional framework. For those innocent owners, like the Slaybaughs and Banaszak, who have suffered from the destroy-and-dash actions of their local law enforcement operating within those circuits that have already spoken, their remedy is fait accompli – it is dead on arrival. Such is contrary to the Fifth Amendment's self-executing promise of compensation and this Court should wait no longer.

CONCLUSION

Amicus Anthony Banaszak respectfully urges this Court to take up the Slaybaugh's petition for a writ of certiorari.

Respectfully submitted,

PHILIP L. ELLISON

Counsel of Record for

Amicus Curiae

OUTSIDE LEGAL COUNSEL PLC

530 West Saginaw St

Hemlock, MI 48626

(989) 642-0055

pellison@olcplc.com

February 2025