Crystal Acker

From: Grace Barresi <gmbarresi@gmail.com>
Sent: September 05, 2019 11:12 AM
To: Crystal Acker
Subject: 334 Purvine Road UPC17-0020

EXTERNAL

Dear Crystal,

Thank you for the opportunity to provide insights on the proposed cannabis business at 334 Purvine Road.

The Board of Supervisors must **deny** the Conditional Use Permit (CUP) UPC17-0020 for several reasons. I will focus on one: odor.

We now have existing examples in neighborhoods of the odor nuisance created by cannabis plants. Over the last 2 years, cannabis businesses operating in the Penalty Relief Program have been allowed to flourish and cultivate without permits or odor abatement. Residents know first-hand what it is like living next to large cultivations ranging from 10,000 sq feet to 44,000 sq feet. It literally stinks!

After one of the BOS meetings in April 2018, I was introduced to Supervisor Gore who told me that he lived next to a cannabis grow. I remember him telling me "it stunk" and that he had to explain to his friends why his backyard smelled of skunk. I also recall Supervisor Gore stating the parcel size needed to be increased to 10 acres which the Supervisors voted on in August 2018. This is a significant step forward and we greatly appreciate the progress but **setbacks** still need to be increased.

Permit Sonoma is recommending odor mitigation plans for outdoor cannabis cultivation that are neither effective nor based on scientific data. These plans are based on four articles that support using vegetation screening to mitigate odor from livestock, not cannabis. Livestock odor comes mainly from ammonia which travels on the ground and could be absorbed by shrubs and trees. There is no evidence to suggest cannabis terpenes behave the same way. The evidence we do have is based on real life data which demonstrate the following:

1. **Vegetation screening does nothing to mitigate the odor from the outdoor cannabis cultivation:** My family has lived adjacent to a 38,000 sq foot cannabis grow for the last 2 years. Numerous large trees separate my home from this grow. However, we still smell the pungent odor. The odor travels to our neighbors home and remains trapped in their garage 1,100 feet away. Large trees and abundant vegetation border their home as well.
2. **Setbacks must be increased:** The only reasonable ways to mitigate the odor nuisance is to increase setbacks from neighboring properties to 1000 feet, or ban outdoor cultivation. Interestingly, one of the articles referenced by Permit Sonoma, written by Schauberger and Pringer, actually supports increased setbacks. The authors concluded a separate distance of 400 meters (1312 ft, or 1/4mile) was needed to remove the odor annoyance (Figure 3 in the article).

Sonoma County and/or the cannabis business should conduct proper scientific studies by reputable companies to adequately assess the impacts of odor. The Canadian government is consulting with a company called ORTECH Consulting https://www.ortechconsulting.com/ to assess where a cannabis business can cultivate without creating a nuisance. This company has analyzed cannabis odor over the last four years using both meteorological and topographical data for the cultivation site and neighboring properties, and using quantitative

measures of detection of cannabis terpenes by the general population. The ORTECH consultants have concluded that acceptable setbacks for an outdoor cannabis grow would be **at least 1,000 meters** (3281 ft), although it could be more depending on topography and prevailing winds.

In December 2018, the NY Times reporter Thomas Fuller wrote an article on the unintended consequences of cannabis cultivation, focusing on odor. He interviewed one of the residents on Purvine Road, Britt Christensen. Britt shared her experience living in a home adjacent to outdoor cannabis plants growing on 334 Purvine road and the negative impact the odor had on her and her family.

The owners of 334 Purvine road claim they only had a small number of plants growing outdoor for medical use and, yet it still stunk. Imagine what it will be like for Britt and her family if 28,000 sq feet of plants is approved for outdoor cultivation. My understanding is the current site plans at 334 Purvine Road have the outdoor cannabis cultivation 600 feet from Britt's home. How can this be allowed for 2 years if the CUP is approved? https://www.nytimes.com/2018/12/19/us/california-marijuana-stink.html

Please listen to residents who have firsthand experience living next to a cannabis business. Uphold Section 26-88-250 of the ordinance which states: Commercial cannabis activity **shall not create a public nuisance or adversely affect the health or safety of the nearby residents or businesses by creating** dust, light, glare, heat, noise, noxious gasses, **odor,** smoke, traffic, vibration, unsafe conditions or other impacts, or be hazardous due to the use or storage of materials, processes, products, runoff or wastes. Or better yet, revise the ordinance so that these businesses can flourish in areas of the County where residents are not impacted.

Thank you for your time and consideration.

Grace and Robert Guthrie
Sebastopol

Crystal Acker

From: Deborah Eppstein <deppstein@gmail.com>
Sent: September 05, 2019 1:52 PM
To: Crystal Acker
Subject: for file of 334 Purvine, UPC 17-0020

EXTERNAL

Dear Crystal,

Thank you for the opportunity to allow the public to provide input to the appeal filing for 334 Purvine, UPC 17-0020.

I urge the Board of Supervisors to deny this permit. The following analysis is based on the odor issue alone, although there are other issues including traffic, noise, 24/7 operations, lights and safety that also are problematic and should result in denial of this CUP application.

Odor is just one of the major issues that must be addressed before any outdoor cannabis grow can be properly and fairly be approved. Quantitative methods are available for determining how far cannabis terpenes travel depending on topography and meteorological data. The consulting company Ortech [https://www.cannabisconsultingservices.ca] has developed quantitative analytical methods for determining how far cannabis terpenes travel as a function of topography and meteorological data; they have been conducting odor analysis for 40 years for commercial farms as well as municipal and county governments including for cannabis cultivation. They take a scientific and practical approach, using meteorological and topographical data for the cultivation site and neighboring properties, and using quantitative measures of how far cannabis terpenes travel as well as their detection by the general population. In order to meet the 'no noxious odors' requirement of 26-88-250(f) of the cannabis ordinance, Sonoma County could propose standards in conjunction with neighborhood input of how many days a year neighbors can be subjected to noxious odors on their property. In Ontario, this level of detection cannot be present more than 2 days/year, respecting rights of neighbors to good air quality.

To summarize from Ortech's experience with analyzing cannabis odor, they said the acceptable minimum setback for an outdoor cannabis grow would be at least 1000 meters (3281 ft).
" In our experience the minimum set back distance is at least 1000 meters."

Ortech confirmed that planting trees does not mitigate the odor. This agrees with our real life experience that thick conifer cover does not prevent overpowering odor at least 700 ft away from a 10,000 sf outdoor grow. **The only mitigation for odor from outdoor cannabis cultivation is separation distance:**

"In terms of odor controls, there isn't much that can be done for outdoor farms except to optimize plant layouts with prevailing wind directions during the most odorous part of the growing cycle."

Knowing that quantitative analysis method is available, it would be irresponsible, arbitrary and negligent for Sonoma County to approve an outdoor grow with less than a minimum 1000 ft setback without previously confirming that this would not be likely to cause a problem. When there are prior objections from neighbors as has occurred for 334 Purvine from a much smaller outdoor grow than is now proposed, to approve such a proposed grow would constitute gross negligence.

Rather than recommending approval of a CUP for outdoor cultivation for a 2-year (or even 1-year) term to see how much it affects neighbors (ie, using the neighbors are the guinea pigs), a quantitative analysis should be performed prior to any planting, to determine an actual acceptable setback for each specific topographical and meteorological situation, that would meet the requirements of 26-88-250(f). A preliminary result could be available in 2 weeks, with full results in 4-6 weeks. If such an analysis is not undertaken, a minimum setback of 1000 ft from an outdoor grow to neighbor's property line should be required, with the understanding that such a setback may still not be sufficient to meet the requirements of 26-88-250(f).

The 4 publications that Permit Sonoma has provided on odor analysis are largely irrelevant to cannabis odors, as they relate to odors from livestock. These odors are caused by very different molecules as well as particulates. However, one of the publications, by Schauberger and Pringer (2012; Chemical Engineering Transactions, vol 30, p13-18), did utilize scientific methods to conclude that distances of 400 meters (1312 ft) were needed to remove nuisance from environmental noxious odors.

In addition to odor, many other issues associated with commercial cannabis cultivation and processing negatively impact neighbors, including traffic, noise, security light, and safety. Although a 1000 ft setback would not remove all such negative impacts pursuant to the requirements of 26-88-250(f), it could help to reduce some of these impacts.

Can you please confirm that these comments have been entered into the public record for the hearing for 334 Purvine?

Thank you.

Sincerely,
Deborah Eppstein, PhD

Crystal Acker

Sent:
To:
Subject:

Hi Crystal- I was informed that we should send our comments directly to the BOS. Can you also please include these in the public file?

Thanks,
Deborah Eppstein

Begin forwarded message:

From: Deborah Eppstein <deppstein@gmail.com>
Subject: Objection to cannabis CUP at 334 Purvine, UPC 17-0020
Date: September 19, 2019 at 9:43:03 AM MDT
To: Susan Gorin <Susan.Gorin@sonoma-county.org>, David Rabbitt <david.rabbitt@sonoma-county.org>, Shirlee Zane <Shirlee.Zane@sonoma-county.org>, district4@sonoma-county.org, Lynda Hopkins <lynda.hopkins@sonoma-county.org>
Cc: Darin Bartow <Darin.Bartow@sonoma-county.org>, Pat Gilardi <Pat.Gilardi@sonoma-county.org>, Andrea Krout <andrea.krout@sonoma-county.org>, Tracy Cunha <Tracy.Cunha@sonoma-county.org>, Leo Chyi <Leo.Chyi@sonoma-county.org>, Stuart Tiffen <Stuart.Tiffen@sonoma-county.org>

Dear County Supervisors,

I urge the Board of Supervisors to deny this permit. The following analysis is based on the odor issue alone, although there are other major issues including traffic, noise, 24/7 operations, lights crime and safety that also are very problematic and should result in denial of this CUP application.

Odor is just one of the major issues that must be addressed before any outdoor cannabis grow can be properly and fairly be approved. Quantitative methods are available for determining how far cannabis terpenes travel depending on topography and meteorological data. An internet search found the consulting company Ortech [https://www.cannabisconsultingservices.ca] who has developed quantitative analytical methods for determining how far cannabis terpenes travel as a function of topography and meteorological data; they have also measured level of detection by the general public. They have been conducting odor analysis for 40 years for commercial farms as well as municipal and county governments including for cannabis cultivation.

Ortech has scientifically analyzed that planting trees does not mitigate cannabis odor. This agrees with our real life experience in Sonoma County that thick conifer cover did not prevent overpowering skunk-like odor at least 700 ft away from a 10,000 sf outdoor grow. Ortech states that **the only mitigation for odor from outdoor cannabis cultivation is separation**

distance. To summarize from their experience with quantitative analysis of terpenes, the acceptable minimum setback for an outdoor cannabis grow would be at least 1000 meters **(3281 ft)** to prevent the odor from escaping to neighboring properties more than 2 days/year. Sonoma County needs to establish its own standards, with neighborhood input, of how many days people could be subjected to noxious odors to meet the health and safety requirements of 26-88-250(f) of the cannabis ordinance. If this operation were next to your home, how many days from July-Oct would you accept not being able to use your yard or open your windows?

Rather than recommending approval of a CUP for outdoor cultivation for a 2-year (or even 1-year) term to see how much it affects neighbors (ie, using the neighbors are the guinea pigs), a quantitative analysis should be performed prior to any planting, to determine an actual acceptable setback for each specific topographical and meteorological situation, that would meet the requirements of 26-88-250(f) including no odors. A preliminary result could be available in 2 weeks, with full results in 4-6 weeks. If such an analysis is not undertaken, a minimum setback of 1000 ft from an outdoor grow to neighbor's property line should be required, with the understanding that such a setback may still not be sufficient to meet the requirements of 26-88-250(f). Knowing that a quantitative method for determining odor distance is available prior to planting an outdoor cannabis field, it would be irresponsible, arbitrary and negligent for Sonoma County to approve outdoor cannabis cultivation without previously confirming that this would not be likely to cause an odor problem for neighbors. When there are prior odor objections from neighbors as has occurred for 334 Purvine from a much smaller outdoor grow than is now proposed, to approve such an outdoor grow would be grossly negligent.

The 4 publications that Permit Sonoma has provided on odor analysis are largely irrelevant to cannabis odors, as they relate to odors from livestock. These odors are caused by very different molecules as well as particulates with different dispersion metrics. However, one of the publications, by Schauberger and Pringer (2012; Chemical Engineering Transactions, vol 30, p13-18), did utilize scientific methods to conclude that distances of 400 meters **(1312 ft)** were needed to remove nuisance from environmental noxious odors.

In addition to odor, many other issues associated with this proposed commercial cannabis operation negatively impact neighbors, including traffic, noise, security lights, crime and safety. It is a known fact in Sonoma County that cannabis operations attract crime, and police protection is not readily available here. I urge you to deny this CUP application as this is not an appropriate location for this type of large commercial operation of a controlled substance affecting near by residents.

If you want further information or wish to discuss any of these points concerning odor analysis, please let me know.

Thank you.

Deborah Eppstein
801-556-5004

Crystal Acker

Sent:
To:
Cc:
Subject:
Attachments:

Dear supervisors,

For the reasons in the attached comments, I urge you to deny the cannabis permit at 334 Purvine Road.

Craig S. Harrison
4953 Sonoma Mountain Road
Santa Rosa, CA 95404
707-573-9990

Comments on Proposed Marijuana Cultivation at 334 Purvine Road

The proposed commercial marijuana cultivation permit at 334 Purvine Road (UPC17-0020) should be denied for the reasons discussed below. The proposed activity is incompatible with the rural residential character of the area and diminishes the quality of life of other residents on that road. It is the wrong place for this facility.

Most residents of the Dairy Belt believe that it should be designated a cannabis exclusion zone. The Board of Supervisors has thus far refused to allow exclusion zones despite the fact that seventy percent of Sonoma County voters think that individual communities should be granted the power to create exclusion zones that ban commercial marijuana cultivation.[1]

I. Required Findings Under Zoning Code.

Before the County can approve any conditional use permit under the Zoning Code, it must find that the proposed use is not detrimental to the health, safety, peace, comfort or welfare of the neighborhood or the general public. Sonoma County Code section 26-92-070(a). In addition, under section 26-88-250(f), the standard is more specific for issuance of a commercial cannabis permit. Any grow operation:

> shall not create a public nuisance or adversely affect the health or safety of nearby residents or businesses by creating dust, light, glare, heat, noise, noxious gasses, odor, smoke, traffic, vibrations, unsafe conditions or other impacts, or be hazardous due to the use or storage of materials, processes, products, runoff or wastes."

No reasonable decision maker could make this finding about a commercial cannabis cultivation project on Purvine Road. The county's population is about 500,000, and County officials estimate there are about 5,000 growers (99 to one). There is no history of commercial marijuana cultivation on Purvine Road before the Cannabis Ordinance was adopted, and here the discrepancy between the number of growers and non-growers is even more skewed.

The operators had no connection with Purvine Road before the Cannabis Ordinance was adopted. It should be easy to weigh the interests of Purvine Road residents, whose health, safety, peace, comfort, and general welfare should be paramount, against individuals whose sole interest in disturbing the peaceful community is to maximize profits in a lucrative and disruptive commercial activity. This project grow essentially uses the Purvine Road neighborhood as a shield to hide from criminals who invade homes to steal cash or marijuana.

II. The Promoters Are Chronic Scofflaws

A state judge recently enjoined this operation when the neighbors sued because he found innumerable violations of law. The violations include launching a cannabis tourism operation; advertising tours of its operation and selling product; and renovating the property for the purpose of hosting visitors and events, including space for group dinners and a bar.

---

[1] Save Our Sonoma Neighborhoods Press Release (July 16, 2018), Attachment 1.

In 2016, the SEC fined and suspended the securities license of the applicant's CEO for insider trading and required his company to disgorge profits and pay penalties of $8.9 million. In 2007, the ABC fined and suspended the alcoholic beverage license of Magruder & Crum LLC, a company in which the applicant's COO, Sam Magruder, was a principal. It appears that Magruder hid his ownership interest in the company from the ABC, a serious offense.

These activities show disrespect for the neighborhood and a belief that the applicant is above the rules. The applicant has a history of gaming the County code enforcement system. As shown below in Section VI.2., the County cannot responsibly enforce its cannabis ordinance.

Under the Sonoma County Code section 26-88-252(d)(4), if the owner had a cannabis permit the "three strikes penalty" would be invoked. Any combination of three administrative citations, verified violations, or hearing officer determinations of violation of any of the permit requirements or standards at any property or combination of properties of the same owner or operator within a two-year period, the cannabis permit would be revoked at the subject property for a minimum period of two years.

The best indicator of future behavior is past behavior. No rational permitting agency would want this owner to be involved in a cannabis operation. It would be continual trouble for Permit Sonoma and the neighborhood.

Simply because of the behavior of the owner of this property, the permit application should be denied with prejudice. There is no way any rational permitting agency could conclude this application meets the requirements of Sonoma County Code section 26-88-250(f). It would create a public nuisance and adversely affect the health or safety of nearby residents.

III. Commercial Marijuana Development Does Not Belong on Purvine Road.

U.S. Attorney McGregor Scott in Sacramento describes marijuana grows as "industrial agriculture."[2] The activity intensely uses water, fertilizers, pesticides, and labor and seems to involve more manipulation and processing of plants than growing them. The cultivation process is akin to an open-air laboratory that grows algae for biofuels. Much of the grows uses soil brought in from elsewhere. The Cannabis Ordinance, section 26-02-140, explicitly excludes cannabis from being an "agricultural crop" because marijuana poses unique risks to the health, safety, and welfare of residents.[3] This site purportedly will have ten full-time employees,[4]

---

[2] Don Thompson, "Agents seize Northern California pot houses tied to Chinese" (April 4, 2018) https://www.vcstar.com/story/news/2018/04/04/agents-seize-northern-california-pot-houses-tied-chinese/488258002/

[3] In adopting the Cannabis Ordinance, the Board found that those risks include fire hazards, criminal activity, unpleasant odors and other impacts on neighbors, groundwater and other environmental impacts, and the product's potential as an attractive nuisance for children (Ordinance No. 6189, Findings, section I, subsections I, N, O and Q).

[4] Expanded Initial Study, p. 59.

although surely seasonal trimmigrants will be employed as well. This is a medium-sized business and permitting it to operate on Purvine Road is out of character for the quiet, rural community.

Dairy Belt residents are not unique with regard to their concerns about living near cannabis cultivation. The Wickers Group conducted telephone interviews with a statistically chosen sample of Sonoma County residents who voted in the November 2016 election. They found that County residents are not comfortable living near marijuana cultivation. More specifically, 75% want to live at least 1/4 mile away; 62% want to be at least ½ mile away; and 52% at least one mile away. Only 19% would be comfortable living adjacent to a grow.[5] These findings are similar to, but more detailed than, a poll taken by The Press Democrat.[6]

The proposed outdoor and mixed light grows are well-known to emit a stench. Supervisor Lynda Hopkins remarked that "she was surprised by 'how pungent' the plants were."[7] The New York Times has recently written about the stench from marijuana plants.[8] An editorial by the Chicago Tribune begins with "Marijuana sticks."[9]

IV. Commercial Marijuana Development Undermines Public Safety.

Home invasions related to marijuana grows have become increasingly common in Sonoma County, and the risks of criminal activity is a major concern to rural residents. In many cases non-growing neighbors have been terrorized when the "wrong" home is invaded. The Board of Supervisors recognized this problem in the Cannabis Ordinance.[10] There are already insufficient sheriffs on duty, especially at night when home invasions tend to occur. It can take a long time for a sheriff to respond to a call. Permitting commercial cannabis grows on Purvine Road would introduce a previously unknown and dangerous activity into our community that can attract violent criminals.

According to information obtained from Sheriff Mark Essick, since 2013 ten marijuana-related murders and 22 marijuana-related home invasions have been reported in the unincorporated areas of Sonoma County. These numbers would increase substantially if the cities were included. In August, three men were arrested for kidnapping and attempted murder at a grow in the County's

---

[5] Save Our Sonoma Neighborhoods Press Release (July 16, 2018).

[6] Guy Kovner, Press Democrat Poll finds sharp division in Sonoma County over cannabis cultivation (June 3, 2018), http://www.pressdemocrat.com/news/8366486-181/press-democrat-poll-finds-sharp

[7] Guy Kovner, Press Democrat Poll finds sharp division in Sonoma County over cannabis cultivation (June 3, 2018), http://www.pressdemocrat.com/news/8366486-181/press-democrat-poll-finds-sharp

[8] Thomas Fuller, 'Dead Skunk' Stench from Marijuana Farms Outrages Californians (December 19, 2018), https://www.nytimes.com/2018/12/19/us/california-marijuana-stink.html?module=inline

[9] Deodorizing marijuana (January 2, 2019), https://www.chicagotribune.com/news/opinion/editorials/ct-edit-marijuana-smell-farm-nuisance-20181224-story.html

[10] Ordinance No. 6189, Findings section I, subsection O.

permit program.[11] The Sheriff's department has recently begun tracking marijuana-related crimes that do not involve murder or home invasions. In the four months from late April to late August, twenty marijuana-related crimes were reported (five per month). When the deputy sheriffs are better-trained to use this new system, Sheriff Essick believes more such crimes will be reported.

It is obvious that the County's cavalier approach to marijuana grows has opened the door to a dangerous activity in the Dairy Belt.

The County recognizes the dangers of marijuana cultivation when it comes to protecting its own employees. In eliminating the mandatory minimum 24-hour notice for an inspection of a cultivation, the code enforcement staff "for safety" will still call in advance so the visit is expected."[12] The County is rightfully concerned for the safety of its staff, but has less concern for residents who are asking the County not to allow marijuana cultivation in their neighborhoods.

V. Commercial Marijuana Development Is Not "Agriculture" Within the Meaning of the BV Plan, Federal Law, State Law, or the Cannabis Ordinance.

Section 26-02-140 of the Cannabis Ordinance explicitly excludes cannabis from being an "agricultural crop" because, unlike other crops, marijuana poses unique risks to the health, safety, and welfare of residents. In 2016, the supervisors found:

> The Cannabis Act [Medical Cannabis Regulation and Safety Act] and the proposed zoning ordinance both distinguish cannabis from other types of agriculture. This is due to the federal classification as a Schedule I drug, the security concerns associated with a high value crop, and the unique characteristics of the cannabis operations. Cannabis cultivation operations are not protected under the Right to Farm Ordinance which is intended to protect agricultural operations from being considered a nuisance. [13]

Whatever marijuana may be, *ipso jure*, it is not an agricultural product under the law in Sonoma County. Commercial cannabis is not "agriculture" under federal law or California law.

VI. CEQA: Changed Circumstances Issues.

CEQA review for this project requires the disclosure and evaluation of potential environmental impacts, including cumulative and reasonably foreseeable impacts. Substantial changes in circumstances since the ordinance was adopted reveal significant new environmental effects that

---

[11] Susan Minichiello, Three men arrested for kidnapping, attempted murder at Santa Rosa marijuana farm (Aug. 13 2018). https://www.pressdemocrat.com/news/8631161-181/three-men-arrested-for-kidnapping?sba=AAS

[12] Memo from Amy Lyle, Permit Sonoma, to Sonoma County Planning Commission, "Cannabis Ordinance Amendments, ORD18-0003 (September 6, 2018), p. 2 [sic]. Actually p. 3.

[13] Ordinance No. 6189, Findings, section I, subsection I.

the County did not analyze previously and has failed to do so. CEQA Guidelines section 15162(a).

1. Declines in Property Values for Residences Located Near Grows.

Some operators assert that properties that are permit-eligible for cannabis cultivation have seen an increase in value since 2016. This is an example of how asking a misleading question provides an irrelevant answer. The information that needs to be disclosed is the effects of inserting a marijuana grow into a rural neighborhood on the value of existing residences that are not involved in the marijuana business.

There is now sufficient experience in Sonoma County to undertake an empirical study on the effects of proposed commercial marijuana permits on the value of nearby residences. The study should include all of the following projects: UPC17-0023 (5000 Lakeville Highway, Lakeville); UPC18-0018 (3062 Adobe Road, Petaluma); UPC17-0095 (3215 Middle Two Rock Road, Petaluma); UPC18-001 (885 Montgomery, Sebastopol); UPC17-0067 (5364 Palmer Creek Road, Healdsburg); APC17-011 (8105 Davis Lane, Penngrove); UPC18-0027 (6877 Cougar Ln, Santa Rosa); UPC18-0037 (2260 Los Alamos Road, Santa Rosa) ZPC17-009 (2108 Schaeffer Road, Sebastopol), 1400 Freestone Valley Ford Road, Valley Ford (APC17-0015) and 1478 Freestone Valley Ford Road (APC17-069).

It may be true that if a parcel of land in rural Sonoma County were sold to a developer of a hog farm, cattle feedlot, sewage treatment plant, marijuana grow, nuclear waste disposal site, or oil refinery that the selling price might be above market value if there seemed any chance that the necessary permits could be obtained. But surely the values of nearby residential properties would diminish. Most Sonoma County voters are uncomfortable living near marijuana cultivation. With 36% of County voters not wanting to live within five miles of a grow, 62% not wanting to life within a half mile of a grow, and 75% not wanting to live a quarter mile from a grow,[14] it defies common sense to assert that commercial marijuana cultivation does not depress property values of nearby residences. After legalization in Colorado, homes within a half-mile of a marijuana business suffered lower property values.[15] In this case, the value of residences on a milelong road that is shared with a commercial marijuana operation would find far fewer potential buyers.

2. The County Cannot Responsibly Implement Its Cannabis Program.

The eight-hundred-pound gorilla in the cannabis program is the fact that most everyone, publicly or privately, agrees that the ordinance and its implementation have been a disaster. Neighborhood groups are furious that County encourages cultivation near their homes because

[14] Save Our Sonoma Neighborhoods Press Release (July 16, 2018).

[15] Hudson Sangree, "If a marijuana grow warehouse opens nearby, will your home value suffer?" (September 17, 2017) http://www.sacbee.com/news/business/real-estate-news/article173621656.html

when growers cause problems,[16] they have to live with it for at least six months and often years. Growers are unhappy.[17]

County officials seem frustrated and tired of dealing with marijuana problems.[18]

There are several plausible explanations for poor implementation: (1) Permit Sonoma is overwhelmed and has inadequate staff or financial resources; (2) the Cannabis Program Director, county counsel, and Permit Sonoma lack the will to enforce the law because they desperately want a failing program to succeed; (3) County staff are incompetent.

It doesn't matter which explanation(s) is correct. The end result is identical for people who are subjected to marijuana cultivation.

An overarching cause of the problems stems from the County's decision in 2016 not to comprehensively study the issues and engage in normal land use planning. Instead, it cut corners in the CEQA process by issuing a Negative Declaration instead of an environmental impact report. "The purpose of an environmental impact report is to identify the significant effects on the environment of a project, to identify alternatives to the project, and to indicate the manner in which those significant effects can be mitigated or avoided."[19] "An EIR is an 'environmental alarm bell' whose purpose it is to alert the public and its responsible officials to environmental changes before they have reached ecological points of no return.'"[20]

But there are none so deaf as those who do not want to hear. Had the County done an environmental impact report, it could have mitigated or avoided many of the problems that plague neighborhoods. Other problems stem from a poorly conceived and even more poorly implemented penalty relief program, discussed below.

---

[16] Thomas Fuller, 'Dead Skunk' Stench from Marijuana Farms Outrages Californians (December 19, 2018), https://www.nytimes.com/2018/12/19/us/california-marijuana-stink.html?module=inline

[17] A lawyer for growers called "the marijuana regulations 'illusory' and said the county's rules are entrapping cultivators 'into a sphere of illegality' by giving false promises to clients like his 'who are trying to do nothing other than be a lawful cultivator.' Julie Johnson, "Neighbors file federal lawsuit to shut down Sonoma County cannabis grower." Press Democrat (Aug. 31, 2018). https://www.pressdemocrat.com/news/8684268-181/neighbors-file-federal-lawsuit-to

[18] Supervisor Rabbitt called for a moratorium at the August 7, 2018 board meeting. Supervisor Gorin wrote "our county and the state were not ready for the intense planning to implement this. What we are experiencing now in the county confirms my original opinion." Cannabis: How Close is Too Close? Sonoma County Gazette (July 31, 2018). https://www.sonomacountygazette.com/sonoma-county-news/cannabis-cultivation-in-sonoma-county-the-debate-continues

[19] Public Resources Code section 21002.1(a).

[20] Laurel Heights Improvement Assn. v. Regents of University of California (1988) 47 Cal.3d 376, 392.

It is past time for a pause in an irresponsible program. The County should frankly and openly admit error, analyze what went wrong, and implement solutions to the problems.

The County's incompetence in implementing the ordinance is new information of substantial importance that shows that it will have significant environmental effects that were not analyzed in the Negative Declaration. CEQA Guidelines section 15162(a). The County should suggest how the problems can be mitigated or avoided going forward. The County should not issue any new permits until it can demonstrate that it has the tools, resources, and will to administer its program and can expeditiously protect residents. It also must demonstrate it has the will to faithfully execute its own ordinances and policies. If those tools and resources do not exist, or if the County cannot insure the rule of law, it should stop commercial cannabis cultivation altogether. Dispensaries in Sonoma County can purchase marijuana from other California counties.

What follows are twelve examples of problems in the implementation of this program. One could write a treatise on this subject.[21]

Example 1. **3062 Adobe Road, Petaluma (UPC18-0018).** Sonoma County's management of its marijuana cultivation program is so poor that four families in Petaluma had to file a federal Racketeer Influenced and Corrupt Organizations Act (RICO) suit to shut down a grow that was wreaking havoc on their homes. They suffered noxious odors that caused significant breathing problems, including to a young paraplegic who uses a breathing tube.[22] The illegal grow was reported to the county in April, and the County sent a notice ordering the company to cease all cannabis activities on May 29. Yet in late August marijuana was still being grown and causing problems. The County settled the case after the RICO suit was filed by agreeing to let the grow continue until November 1st when the growers agree to a $400,000 penalty that appears to be a bribe that allowed several million dollars of marijuana to be sold on the black market. This indicates the County lacks the will or the tools to shut down an illegal grow for six months.[23]

Example 2. **6583 St. Helena Road, Santa Rosa (UPC17-0043).** For over eighteen months, neighbors of this grow were fearful for their safety due to the growers' possession of firearms and threats of home invasions. The County issued notices of violation for three illegally-constructed greenhouses and unpermitted electrical installations in September 2017 but did little to resolve them. The electrical violations could cause wildfires. The growers installed

---

[21] Other permits that could be studied include: UPC17-0095 (3215 Middle Two Rock Road, Petaluma); UPC18-0027 (6877 Cougar Lane, Santa Rosa); 1400 Freestone Valley Ford Road, Valley Ford (APC17-0015); and 1478 Freestone Valley Ford Road (APC17-069).

[22] Julie Johnson, "Neighbors file federal lawsuit to shut down Sonoma County cannabis grower." Press Democrat (Aug. 31, 2018). https://www.pressdemocrat.com/news/8684268-181/neighbors-file-federal-lawsuit-to

[23] Julie Johnson, "Petaluma-area cannabis farm whose neighbors sued agrees to shut down." Press Democrat (Aug. 31, 2018). https://www.pressdemocrat.com/news/8692175-181/petaluma-area-cannabis-farm-agrees

unpermitted high-intensity electric lights without coverings. On foggy nights the illumination appears to be a wildfire. On one occasion, three fire departments deployed for a false alarm. In August, three men were arrested for kidnapping and attempted murder there.[24] They had a rifle on the premises, contrary to the ordinance. The County issued a notice to the operator to stop growing on August 14, and the operator appealed. A hearing was held on September 7, and the hearing officer was scheduled to decide in late September or October. Then more appeals are possible. It is taking over eighteen months to resolve an intolerable situation.

Example 3. **5000 Lakeville Highway, Petaluma (UPC17-0023).** For about two years, residents on a small lane were subjected to noxious marijuana odors. The grower was operating within the 300-foot setback to a home, contrary to law. Code enforcement officers failed, neglected, and refused to shut down the grow because they were in the penalty relief program. For four weeks the neighbors were exposed to vicious dogs that got loose when a security gate was left open. Contrary to the ordinance, they illuminated bright lights on many nights when no one at Permit Sonoma was on duty. One resident filed a complaint in January and was almost immediately told the issue was resolved. Yet the stench lingered. Permit Sonoma does not investigate complaints on weekends, holidays, or between 5 PM in the evening and 8 AM in the morning, while growers operate constantly. Finally, Permit Sonoma shut down the grow and it did stop in August after the grower's appeal to the Board of Supervisors failed.

Example 4. **5364 Palmer Creek, Healdsburg (UPC17-0067)**. Since the purchase of the property in June 2016, the operator has never had a legal source of water yet is now completing his second harvest season. Contrary to section 26-88-250(g)(10) and the Penalty Relief Program, the operator has exclusively used trucked water. The operator has been hauling recycled waste water day and night and a commercial potable water supplier has been delivering water daily to the grow. Residents have been reporting violations to code enforcement since November 2017. The County allowed the operation to continue unabated until recent complaints resulted in an agreement to shut down. The County has been allowing the current harvest to be sold despite the fact that the grower has no State license. The marijuana is apparently sold on the black market in violation of California and federal law.

Example 5. **2260 Los Alamos Road, Santa Rosa (UPC18-0037).** For fifteen months, the County has allowed the applicant to grow marijuana without complying with the Cannabis Ordinance. Satellite images indicate the small grow in June 2017 expanded to 47,000 square feet in October 2017. Despite exceeding the one-acre limit, paying taxes on only 35,000 square feet of cannabis, violating the ordinance by being plainly visible from the entrance of Hood Mountain State Park, and submitting an application that omitted ten required items, the County allowed the grower to continue past the June 1st deadline for a complete application. The County took a month to declare the application incomplete, and then extended the deadline another month. The County eventually sent a cease and desist letter, but the grower appealed. By this time, satellite

[24] Susan Minichiello, Three men arrested for kidnapping, attempted murder at Santa Rosa marijuana farm (Aug. 13 2018). https://www.pressdemocrat.com/news/8631161-181/three-men-arrested-for-kidnapping?sba=AAS

imagery shows he had illegally expanded to 1.5 acres. At this point, the County could have assessed $280,000 in penalties but instead stopped the proceeding to evaluate other issues. Today he is still being allowed to grow, without a state license, and just harvested a lucrative crop that will probably be sold on the black market. Despite failing to provide a hydro-geo report and having insufficient water, the County has granted his request to drill a third well. The County seems eager to cater to illegal growers.

Example 6. **885 Montgomery Road, Sebastopol (UPC18-0001).** Since at least April 2017, the non-resident owner of a ten-acre parcel near Sebastopol has leased the property to a third party to grow about an acre of commercial marijuana. Forty-six families live within a 1,000-foot radius, and seven of them border the flag lot. Thousands of outdoor plants are located just a few feet from gardens, barbeques, a horse dressage arena, and homes. The stench, noise, and fear of an armed conflict has made the lives of neighbors miserable while reducing their property values. Some wear masks when they spend more than fifteen minutes outside to avoid feeling nauseous or getting a headache. For a year, County officials have ignored neighbor complaints about odor, noise, night light pollution, and security cameras trained on neighboring homes. The County failed, neglected, and refused to verify false statements in the grower's Penalty Relief Application Form. The County has allowed the grower to use power circuits that were installed without permits, exposing neighbors to fire risks. The County refused to shut the grow down after violations of the Cannabis radiance including illegal grading, terracing, and tree removal. The operator is completing the second year of harvest without a County permit. County officials tricked the State of California to issue the operator a temporary license to allow it to sell cannabis in dispensaries. For over a year, the County has shown no desire to stop activities that are ruining the ability of this neighborhood to conduct normal life.

Example 7. **7777 Cougar Lane, Santa Rosa** (no cannabis application). Since at least 2008 the owner has been reported multiple times for illegal construction and electrical violations. The Fire Marshall, Sheriff, and Permit Sonoma could see the illegal activity but refused to act without a warrant. In 2011 at the urging of Supervisor Brown, Permit Sonoma ordered the unpermitted construction to be removed, but the County never enforced the order. Similar complaints were filed in 2013 but the County failed again to act. The County issued citations for illegal construction in February 2018 and for illegal cannabis in May 2018 and the marijuana was then removed. The owner failed to appear for hearing on his illegal construction on September 14th 2018 but there is still no abatement. The County's countenance of unlawful behavior for a decade has been an invitation to illegal marijuana grows.

Example 8. **3803 Matanzas Creek Lane, Santa Rosa** (**UPC17-065).** This Bennett Valley property was purchased by investors near Chicago in February 2017 who immediately began an outdoor or mixed light marijuana grow because the County allows anyone to grow under its Penalty Relief Program, not just historical growers in Sonoma County. On September 8, 2017, Permit Sonoma issued a Notice of Violation to the owner for building a greenhouse without a permit. Permit Sonoma did nothing to resolve this. The County should have shut it down pursuant to section 26-88-254(f)(3) on January 1, 2018 because it is located within 1,000 feet of North Sonoma Mountain Regional Park. On March 4, 2018 senior County officials, including the

director of Permit Sonoma and Supervisor Susan Gorin, were asked to consult the County's Cannabis Site Evaluation Map and confirm that this parcel was categorically ineligible. They agreed. Then for five months, the County dithered while the owner grew marijuana. On July 31, 2018, Permit Sonoma sent a notice of violation to the operator. The grower continued to cultivate and harvest marijuana. On September 10, 2018 Permit Sonoma sent a "Notice & Order—Unlawful Commercial Medical Cannabis Use" to the owner and demanded the marijuana be removed within seven days. The owner appealed and the process dragged out until the owner has harvested a full season (two or three crops) of marijuana, all of which is illegal under the County ordinance. Then Permit Sonoma rescinded its Notice and Order because the revised ordinance in October allows the setback from parks to be relaxed. County staff decided that this project qualified for a setback behind closed doors without public input.

Example 9. **8105 Davis Lane, Penngrove (APC17-0011).** This vacant 5.5-acre property is zoned diversified agriculture and was leased by an investor in Sebastopol in mid-2017. Without advance notice to surrounding neighbors, or any opportunity for them to object in a public hearing, the County issued a "ministerial" permit in February 2018. The permit allows the investor to grow commercial marijuana outdoors because the applicant merely satisfied a short list of perfunctory requirements. The neighbors had no opportunity to protest beforehand or appeal afterwards, and the only remedy is expensive litigation. No one in the unincorporated residential neighborhood of small properties engages in commercial agriculture. The operators don't have a house there, so a home invader could easily mistake the home of an innocent neighbor as a location of large amounts of cash or marijuana. The majority of the risks and undesirable effects, such as loss of property value and inescapable noxious odors, are all borne by the neighbors. The supervisors increased the minimum lot size of commercial grows to ten acres in October 2018, but did nothing to void this permit or discontinue future use of similar ministerial permits. Indeed, the permit might be renewed in 2019 and extended up to 5 years.

Example 10. **2108 Schaeffer Road, Sebastopol (ZPC17-0009).** This 2.4-acre property that is zoned DA has been used to cultivate marijuana long before the 2016 Cannabis Ordinance was adopted. It has had innumerable building code violations for years. The County allowed the growers to continue to cultivate under the protections of the Penalty Relief Program when they applied for a commercial cannabis permit. The property has only a 21-foot setback when the zoning code requires 50 feet, and this defect cannot be cured. The County failed to act responsibly to shut down the grow immediately. In late 2018, the County stated it will tell the operator that the permit will be denied, but the cultivator can still file various appeals. The neighbors have been subjected to an illegal marijuana grow for two years since the Cannabis Ordinance was adopted, and may have to continue to suffer this nuisance for many more months.

Example 11. **Failure to Enforce Explicit Terms of Penalty Relief Program**. The temporary code enforcement penalty relief program (PRP) was instigated and revised in 2017 with little notice to or involvement from the public. The PRP has explicit requirements that County officials at every opportunity have decided to ignore or overrule without authority. Building code violations were not addressed until the PRP ended on June 1, 2018. The authorizing ordinance did not empower Permit Sonoma or the cannabis program manager to ignore illegal greenhouses,

wiring, or other code violations. Growers had to commence cultivation by July 5, 2017 and were explicitly forbidden to increase the size of their grow after that date. Growers have cheated brazenly, and no official attempts to verify the facts. A Permit Sonoma official or contractor could easily investigate many violations using satellite imagery from the comfort of the office and at the expense of the grower.

Under the program, growers had to remain current with cannabis taxes. In April when neighborhood groups pointed out that many were not current, County officials did not remove them from the PRP. Instead they sent courtesy letters pleading for payment.

Dozens of growers got a "get out of jail free card" for a growing season by submitting a one-page PRP form without even a fig leaf of an application for a permit. When confronted, County officials took no action to shut down the illegal grows.

County officials repeatedly invented ways of "finding ambiguity in a Stop sign" to allow growers to violate County ordinances or the PRP requirements. Their decision making was ad hoc, opaque, arbitrary, capricious, and contrary to law. But they felt safe that no one would file suit and ask judges to provide some adult supervision. Citizens watched this unfold with horror and became confused, bewildered, and increasingly embittered. Why should anyone trust the County to enforce any provisions in any permit or the ordinance? Now that lawsuits are beginning to be filed, the County is finally trying to shut down grows. It is apparent that some County staff actions and advice to growers have compromised the County's legal position and may subject the County to huge legal liabilities. This is intolerable incompetence.

Example 12. **4065 Grange Road, Santa Rosa (UPC17-0082).** This 4.9-acre property was conveyed from an 80-year-old female Bennett Valley resident to Bennett Rosa LLC in late August 2017. The LLC operator claimed on its Penalty Relief Application forms that the grow began June 30, two months before Bennett Rosa LLC owned them and just before the July 5 deadline for eligibility. None of the LLCs were registered before mid-July. Satellite imagery shows that the grow on the 4.9-acre parcel had not begun on July 9, 2017. The County has ignored complaints about this grow since March, and in June was asked to require the operators to produce ordinary business records (contracts, checks, identity of workers who can be interviewed, proof of purchase of plants, work orders, labor contracts). They apparently have not done so. If the operators provided false or misleading information, the County by law must reject the applications. The County allowed the 2018 harvest to be sold despite the fact that the growers lack State licenses and the marijuana is probably sold on the black market. Like Alfred E. Newman, the County's attitude seems to be "What me worry?"

In sum, the implementation of the County's cannabis program has been an embarrassment to the concept of good governance. The premise of issuing this permit and its mitigated negative declaration is that the county is ready, willing and able to solve any problems that may arise. Nothing could be further from the truth.

—Craig S. Harrison

SAVE OUR SONOMA NEIGHBORHOODS
CITIZENS ADVISORY GROUP

July 16, 2018

PRESS RELEASE

Contact: info@sosneighborhoods.com; (707) 559-8563

Poll Results on Marijuana Cultivation

Save Our Sonoma Neighborhoods commissioned The Wickers Group to conduct telephone interviews with a statistically chosen sample of Sonoma County residents who voted in the November 2016 election. They were surveyed from June 15-19, 2018, and the results have a margin of error of 5.7%.

Here are the responses to this question: "In what proximity to your own home would you feel comfortable having one of these cannabis growers?"

		Cumulative
• Adjacent	19%	
• At least ¼ mile	13%	75%
• At least ½ mile	10%	62%
• At least 1 mile	16%	52%
• At least 5 miles	16%	36%
• No distance is OK	20%	20%

Over half of Sonoma County residents (52%) are not comfortable living within a mile of a commercial marijuana grow, and the overwhelming majority (62%) want grows at least one-half mile (2,640 feet) from their homes. There is little difference among the supervisorial districts, or between rural and urban voters. For example, in West County (supervisorial district 5), slightly more are uncomfortable with living any distance from a grow (no distance is OK 24%), but slightly fewer (67%) want to live at least one-quarter mile away.

The poll found overwhelming agreement (2-1 or 3-1) with these statements:

- Individual communities should be granted the power to create exclusion zones banning marijuana cultivation.

- All parts of marijuana cultivation operations should be screened from public roadways, including the plants themselves and accessory structures.

- Commercial marijuana cultivation's potential water and soil pollution due to fertilizer and chemical runoff is a significant environmental concern.

- Code enforcement of marijuana businesses should be a joint effort between PRMD and the Sonoma County Sheriff.

- The Cannabis Advisory Group should be composed of no more than 50% of its members from the cannabis industry.

The poll found majority agreement with these statements:

- Permits for marijuana cultivation should be restricted to people who have lived in Sonoma County for five years or more.

- Marijuana growers should not be allowed 24 hours notice prior to inspections of their facilities for compliance checks.

SAVE OUR SONOMA NEIGHBORHOODS
CITIZENS ADVISORY GROUP

Save Our Sonoma Neighborhoods urges the supervisors to listen to Sonoma County residents who are not part of the vocal one percent who grow marijuana.

We respectfully request the following at their meeting on August 7:

- 1,000-foot setbacks from homes so families don't have to live near commercial marijuana businesses.
- 20-acre minimum lot sizes for all zoning categories.
- A simple and speedy (less than six months) mechanism for communities to exclude commercial pot production from their neighborhoods.

SOSN is a coalition of neighborhood residents advocating common sense cultivation of commercial marijuana in Sonoma County. Learn more at www.sosneighborhoods.com/ and facebook.com/SaveOurSonomaNeighborhoods/

###

Crystal Acker

Sent:
To:

Cc:

Subject:
Attachments:

THIS EMAIL ORIGINATED OUTSIDE OF THE SONOMA COUNTY EMAIL SYSTEM.
Warning: If you don't know this email sender or the email is unexpected,
do not click any web links, attachments, and never give out your user ID or password.

Colleen Mahoney
Architect
Six C Street, Petaluma
707.765.0225
mobile 415.517.0912
www.Mahoney-Architects.com

MAHONEY ARCHITECTS & INTERIORS

September 18, 2019

Sonoma County Board of Supervisors and County staff

David Rabbitt
Andrea Krout
Shirlee Zane
Susan Gorin
Lynda Hopkins
James Gore
Susan Upchurch
Jennifer Mendoza
Pat Gilardi
Crystal Acker
Tracy Cunha

RE: File # UPC!7-0020
Cannabis use permit – 334 Purvine Road, Petaluma

Supervisors,

I am a working ranch owner on Middle Two Rock Road and I am opposed to allowing cannabis cultivation in our Two Rock Dairy Belt area and in this location. My family has lived on Middle Two Rock Road for over 150 years – 6 generations of family who have deep roots and who have invested in this place for its beauty, safety, wildlife, and quiet. While our homes may not be 20 to 30 feet apart – we are most definitely a neighborhood and this can be seen from attendance at local harvest fairs, to community church events and fire department fundraisers. We are a neighborhood.

The operation of this and any other cannabis operation will be detrimental to the health, safety, peace, and comfort of our beautiful neighborhood. You understand the reasons that have been clearly communicated from lack of compatibility to the: great impacts of: odor, security issues (and lack of decent Sheriff response time) and even illegal cannabis related tourism with busloads of people coming into our peaceful rural properties.

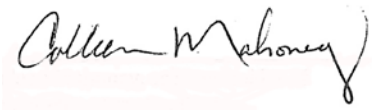
Cannabis is not agriculture. It is not an Ag crop. It is a Federally controlled substance. Our neighborhood is made up of open grazing lands for dairy and beef cattle and other livestock and it has been this way for hundreds of years. Evidence shows that the applicants have violated the law with an unpermitted cannabis grow, events and tours, and even over night guests.

Open and relatively low wire fencing keeps cattle from straying from one property to another – not solid 8 foot high security fencing. Dairy cattle do not require guards, alarms, over bright security lighting and prison camp like fencing.

I would not be opposed to cannabis operations in well-located industrial areas where they do not present the horrible problems they do in our rural area. I believe that this Cannabis Permit Application sets a dangerous precedent for our community and I beg each of you to deny this application based upon the grounds presented by my neighbors and the families on Purvine Road. Outside interests and business people who grow illegal substances should not be allowed to negatively impact our lives and our property values.

Please do not allow this use on our Ag lands.

Sincerely,



Colleen Mahoney
2781 Middle Two Rock Road
Petaluma, CA 94952

September 18, 2019

Sonoma County Board of Supervisors and County staff

David Rabbitt
Andrea Krout
Shirlee Zane
Susan Gorin
Lynda Hopkins
James Gore
Susan Upchurch
Jennifer Mendoza
Pat Gilardi
Crystal Acker
Tracy Cunha

RE: File # UPC!7-0020
Cannabis use permit – 334 Purvine Road, Petaluma

Supervisors,

I am a working ranch owner on Middle Two Rock Road and I am opposed to allowing cannabis cultivation in our Two Rock Dairy Belt area and in this location. My family has lived on Middle Two Rock Road for over 150 years – 6 generations of family who have deep roots and who have invested in this place for its beauty, safety, wildlife, and quiet. While our homes may not be 20 to 30 feet apart – we are most definitely a neighborhood and this can be seen from attendance at local harvest fairs, to community church events and fire department fundraisers. We are a neighborhood.

The operation of this and any other cannabis operation will be detrimental to the health, safety, peace, and comfort of our beautiful neighborhood. You understand the reasons that have been clearly communicated from lack of compatibility to the: great impacts of: odor, security issues (and lack of decent Sheriff response time) and even illegal cannabis related tourism with busloads of people coming into our peaceful rural properties.

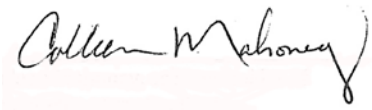
Cannabis is not agriculture. It is not an Ag crop. It is a Federally controlled substance. Our neighborhood is made up of open grazing lands for dairy and beef cattle and other livestock and it has been this way for hundreds of years. Evidence shows that the applicants have violated the law with an unpermitted cannabis grow, events and tours, and even over night guests.

Open and relatively low wire fencing keeps cattle from straying from one property to another – not solid 8 foot high security fencing. Dairy cattle do not require guards, alarms, over bright security lighting and prison camp like fencing.

I would not be opposed to cannabis operations in well-located industrial areas where they do not present the horrible problems they do in our rural area. I believe that this Cannabis Permit Application sets a dangerous precedent for our community and I beg each of you to deny this application based upon the grounds presented by my neighbors and the families on Purvine Road. Outside interests and business people who grow illegal substances should not be allowed to negatively impact our lives and our property values.

Please do not allow this use on our Ag lands.

Sincerely,



Colleen Mahoney
2781 Middle Two Rock Road
Petaluma, CA 94952

Crystal Acker

From: Nancy and Brantly Richardson <nrchrdsn@sonic.net>
Sent: September 17, 2019 6:47 PM
To: Crystal Acker
Subject: FOR THE 17-0020 APPEAL HEARING: TAKINGS CLAUSE: SIGNIFICANT U.S. SUPREME COURT RULING
Attachments: Knick v. Township of Scott.pdf

EXTERNAL

Ms. Acker,

Please add this email comment with attachment to the hearing packet, UPC17-0020, for the appeal hearing in front of the Board of Supervisors on September 30th at 9 a.m.

If the County approves this application and **if** the neighbors decide to sell their properties because of the cannabis operation in their midst and **if** they experience diminished property values because of this adjacency and subsequent nuisance , this may constitute a "taking".

See analysis below of recent U.S. Supreme Court decision. Attached is decision.

Nancy E. Richardson

A Case Changing Takings Law that the County Should Consider in Cannabis Planning

Perhaps the most consequential land use case in thirty years, the Supreme Court decided Knick v. Township of Scott Friday (attached). A person who claims his property has been taken, including a regulatory taking, can now go directly to federal court. He/she no longer has to first file a claim with the county and then file a suit in state court.

It may not be hard to prove diminished property values in many neighborhoods adjacent to cannabis grows.

The facts of the county's behavior (ignoring explicit requirements in the county ordinance to provide a financial benefit to growers while financially harming neighbors who are minding their own business) would be pretty ugly for the county to defend in a trial.

Here's the editorial from the WSJ:

The Supreme Court's Fifth Amendment Reclamation
The Justices remove an obstacle to compensation for government takings of private property.
June 23, 2019

The Supreme Court's first term with a new majority is proving to be far more consequential than many Court-watchers anticipated, and in a good way. Long-dormant constitutional principles—such as the nondelegation doctrine—are being debated anew, and core rights are being refortified according to their original meaning.

On Friday in Knick v. Township of Scott, this constitutional revival project reached the Fifth Amendment ban on government takings of private property. A majority composed of the High Court's conservatives voted 5-4 to overrule a 1985 precedent (Williamson County) that had created a significant obstacle to claims seeking just compensation for government takings.

Specifically, Williamson County required claimants to seek compensation in state courts before they could seek redress in federal court. But as Chief Justice John Roberts pointed out for the majority, the Court has also ruled that a denial in state court precludes any subsequent federal suit.

"The takings plaintiff thus finds himself in a Catch-22: He cannot go to federal court without going to state court first; but if he goes to state court and loses, his claim will be barred in federal court," the Chief Justice wrote. "The federal claim dies aborning."

Thus the state-litigation requirement "imposes an unjustifiable burden on takings plaintiffs," conflicts with the Court's other Fifth Amendment jurisprudence, "and must be overruled," the Chief added.

All of this drew the ire of the Court's four liberals, expressed in a high-spirited if somewhat overwrought dissent by Justice Elena Kagan. She concedes the problem of precluding a federal suit if a claimant loses in state court but says this can be solved with an act of Congress. But if a government taking of property violates the Constitution, then the right to compensation shouldn't depend on a legislative action that enables compensation. The right to compensation is triggered at the time of the taking.

Justice Kagan also frets that Knick will overwhelm the federal courts with takings suits, but that shouldn't happen if states have mechanisms for providing just compensation. She also lambastes the Court for overturning a long-time precedent without adequate justification. "But the entire idea of stare decisis is that judges do not get to reverse a decision just because they never liked it in the first instance," she wrote.

Now she knows how the late Antonin Scalia felt watching narrow liberal Court majorities overturn long-time precedents. She also overstates the Court's willfulness here because it is correcting a departure from the proper understanding of the Fifth Amendment, not inventing some new constitutional doctrine.

This point should be decisive because for decades local and state governments backed by the courts have treated the Fifth Amendment as the poor stepchild in the Bill of Rights. Most notorious was the 5-4 Kelo decision in 2005 that allowed the City of New London, Conn., to take private property not merely for public use but for another private owner.

As Chief Justice Roberts wrote, “Fidelity to the Takings Clause” requires “overruling Williamson County and restoring takings claims to the full-fledged constitutional status the Framers envisioned when they included the Clause among the other protections in the Bill of Rights.” Let’s hope a reconsideration of Kelo is next, as the conservatives work to restore the enumerated rights and separation of powers that are the bedrock of American liberty.

Here's a summary from Scotus Blog:

https://www.scotusblog.com/2019/06/opinion-analysis-court-overrules-takings-precedent-allowing-more-suits-in-federal-court/#more-287179

Opinion analysis: Court overrules takings precedent, allowing more suits in federal court
In its long-awaited opinion in Knick v. Township of Scott, the Supreme Court ruled on Friday that plaintiffs alleging that local governments have violated the takings clause may proceed directly in federal court, rather than first litigating in state court. The opinion overrules a 34-year-old precedent, Williamson County Regional Planning Commission v. Hamilton Bank, triggering a sharp dissent and another debate among the justices about the meaning of stare decisis. The majority opinion also rests on a reading of the takings clause—that a constitutional violation occurs at the moment property is “taken,” even if compensation is paid later—that may have consequences beyond this case.

The takings clause of the federal Constitution provides: “nor shall private property be taken for public use, without just compensation.” This takings case arose from a dispute between petitioner Rose Mary Knick and the township of Scott, Pennsylvania. Knick has a small graveyard on her property, and the township attempted to enforce against her an ordinance requiring such properties to be open to the public during daytime hours. Knick alleged an unconstitutional taking, but a federal court dismissed her suit because she had not first sought compensation in state court.

That brings us to Williamson County. The court held there that the plaintiff could not bring a takings claim in federal court until the plaintiff had pursued an inverse-condemnation action—that is, a lawsuit seeking compensation for the alleged taking—in state court. The Williamson County court drew upon two principles from prior case law: first, that “because the Fifth Amendment proscribes takings without just compensation, no constitutional violation occurs until just compensation has been denied.” Second, the court invoked a line of cases, starting with Cherokee Nation v. Southern Kansas Railway Co. in 1890, for the proposition that

governments need not pay compensation at the time of the property deprivation as long as, at that time, they make available a "reasonable, certain, and adequate" mechanism for recovering such compensation after the fact.

The Williamson County decision has generated substantial criticism, due primarily to its effects on local takings plaintiffs. For one, Williamson County's acceptance of inverse-condemnation suits in state courts as a "reasonable, certain, and adequate" recovery mechanism, and the consequence that local takings plaintiffs must proceed first in state court, means that takings plaintiffs are differently situated from other constitutional plaintiffs, who can go straight to federal court. (Defenders of Williamson County argue this is because the takings clause is different from other constitutional rights—more on that shortly.) Perhaps more strikingly, application of the full faith and credit statute, as the court explained in San Remo Hotel v. City and County of San Francisco, often means that local takings plaintiffs are barred from federal court altogether, a consequence that Williamson County did not foreshadow or perhaps even foresee.

The majority opinion in Knick, written by Chief Justice John Roberts on behalf of himself and Justices Clarence Thomas, Samuel Alito, Neil Gorsuch and Brett Kavanaugh, overrules Williamson County. The majority concludes that Williamson County's "state-litigation requirement imposes an unjustifiable burden on takings plaintiffs" and "conflicts with the rest of our takings jurisprudence." In reaching this conclusion, the Supreme Court does not rely on any of the narrow rationales described in my earlier posts about the case—including the U.S. solicitor general's proposed interpretations of Sections 1983 and 1331, and Knick's supplemental theory based on whether and when the government admits a taking has occurred. Rather, the majority rejects the proposition that the solicitor general (echoed now by the dissent) described as uncontested and over a century-old: that a taking does not occur at the time of the property deprivation so long as an adequate mechanism for compensation is available. Instead, the rule the court announces is that "a government violates the Takings Clause when it takes property without compensation, and … a property owner may bring a Fifth Amendment claim under § 1983 at that time."

The majority supports this rule in several ways. First, it briefly discusses the text of the takings clause: That text does not, the majority notes, state "Nor shall private property be taken for public use, without an available procedure that will result in compensation." The majority roots its interpretation in precedent, specifically Jacobs v. United States and First English Evangelical Lutheran Church v. County of Los Angeles, both of which indicate that the right of compensation arises at the time of the taking. The majority also explains its point by analogy: "A bank robber might give the loot back, but he still robbed the bank." In the same vein, subsequent payments of compensation remedy takings; such remedies do not mean there was no violation. The court also asserts that its holding is basically consistent with the Cherokee line of cases, most of which involved claims for injunctive relief. And it concludes that overruling Williamson County is compatible with principles of stare decisis, the rule that courts should generally adhere to precedent, given how wrong and unworkable the rule has proven to be and the absence of reliance on it. Finally, the majority offers some assurance in response to concerns

expressed by the United States. The majority states that, even though its ruling deems many government actions unconstitutional even if compensation is later paid, it will not lead courts to bar those actions: "As long as just compensation remedies are available—as they have been for nearly 150 years—injunctive relief will be foreclosed." (Elsewhere in the opinion the court states the assurance this way: "Given the availability of post-taking compensation, barring the government from acting will ordinarily not be appropriate.")

In a brief concurrence, Thomas underscores his rejection of what he terms the "'sue me' approach to the Takings Clause"—the approach, advocated by the township and the United States but rejected by the majority, that deems there to be no constitutional violation as long as compensation is later paid. Critiquing concerns raised by the United States, Thomas writes that if the payment of compensation at the time of a taking "makes some regulatory programs 'unworkable in practice,'… so be it—our role is to enforce the Takings Clause as written." Perhaps most intriguingly, Thomas may be understood to cast some uncertainty on the majority's indication that regulatory programs will not face new obstacles. He echoes the majority's explanation that the United States' concerns about injunctions "may be misplaced." But he goes on to write: "I do not understand the Court's opinion to foreclose the application of ordinary remedial principles to takings claims and related common-law tort claims, such as trespass."

Justice Elena Kagan's sharply worded dissent, joined by Justices Ruth Bader Ginsburg, Stephen Breyer and Sonia Sotomayor, takes the court to task for "smash[ing] a hundred-plus years of legal rulings to smithereens." Kagan contests the notion that takings claims are treated worse than others under Williamson County (and rejects the bank robber analogy), noting that "[t]he distinctive aspects of litigating a takings claim merely reflect the distinctive aspects of the constitutional right," which is not violated until "(1) the government takes property, and (2) it fails to pay just compensation." She chides the majority for its textual analysis, noting that the spare text of the Fifth Amendment "no more states the majority's rule than it does Williamson County's." The dissent emphasizes Williamson County's long precedential pedigree, giving the majority "[p]oints for creativity," but stating that the majority's construction of the Cherokee line of cases is "just not what the decisions say" (and was not argued by Knick or her amici). "Maybe," the dissent writes, "the majority should take the hint: When a theory requires declaring precedent after precedent after precedent wrong, that's a sign the theory itself may be wrong."

The dissenters point to three negative consequences of the majority's ruling. First, "it will inevitably turn even well-meaning government officials into lawbreakers." Now that a constitutional violation is complete at the time of deprivation, even if the government will later pay compensation, ordinary land-use regulators become "constitutional malefactors." None of the opinions fully flesh out the possible consequences of that distinction—but local, state and federal officials (who take oaths to uphold the Constitution) will likely be reflecting on the possibility of collateral consequences. Second, the dissent asserts that federal courts will now be flooded with claims that depend on land-use and state-law intricacies, and that the majority's ruling "betrays judicial federalism." Finally, and perhaps most vigorously, the dissent decries

the majority's treatment of stare decisis. "[T]he entire idea of stare decisis is that judges do not get to reverse a decision just because they never liked it in the first instance," the dissent writes, and "it is hard to overstate the value, in a country like ours, of stability in the law." Referencing the court's citation to last term's controversial ruling in Janus v. American Federation of State, County, and Municipal Employees the dissent states, "If that is the way the majority means to proceed—relying on one subversion of stare decisis to support another—we may as well not have principles about precedents at all."

To sum it up: The Knick opinion is a win for those who those who lamented the difficulty local takings plaintiffs faced in accessing federal courts. Local takings plaintiffs may now go directly to federal court, without first proceeding in state court. The theory the Supreme Court relies upon—that a constitutional violation is complete at the time property is taken, even if mechanisms are available to seek compensation—may have other implications for local, state and federal regulators, though the majority emphasizes that regulatory programs are unlikely to be invalidated or enjoined on the basis of today's ruling. Finally, the opinion provides another round of debate within the court about the meaning of stare decisis, now and going forward.

No. 17-647
U.S. Supreme Court

Knick v. Township of Scott

Decided Jun 21, 2019

CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

(Slip Opinion) Syllabus NOTE: Where it is feasible, a syllabus (headnote) will be released, as is being done in connection with this case, at the time the opinion is issued. The syllabus constitutes no part of the opinion of the Court but has been prepared by the Reporter of Decisions for the convenience of the reader. See *United States* v. *Detroit Timber & Lumber Co*., 200 U. S. 321, 337. CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT The Township of Scott, Pennsylvania, passed an ordinance requiring that "[a]ll cemeteries . . . be kept open and accessible to the general public during daylight hours." Petitioner Rose Mary Knick, whose 90-acre rural property has a small family graveyard, was notified that she was violating the ordinance. Knick sought declaratory and injunctive relief in state court on the ground that the ordinance effected a taking of her property, but she did not bring an inverse condemnation action under state law seeking compensation. The Township responded by withdrawing the violation notice and staying enforcement of the ordinance. Without an ongoing enforcement action, the court held, Knick could not demonstrate the irreparable harm necessary for equitable relief, so it declined to rule on her request. Knick then filed an action in Federal District Court under 42 U. S. C. §1983, alleging that the ordinance violated the Takings Clause of the Fifth Amendment. The District Court dismissed her claim under *Williamson County Regional Planning Comm'n* v. *Hamilton Bank of Johnson City*, 473 U. S. 172, which held that property owners must seek just compensation under state law in state court before bringing a federal takings claim under §1983. The Third Circuit affirmed. *Held*:

1. A government violates the Takings Clause when it takes property without compensation, and a property owner may bring a Fifth Amendment claim under §1983 at that time. Pp. 5-20.
(a) In *Williamson County*, the Court held that, as relevant here, a property developer's federal takings claim was "premature" because

he had not sought compensation through the State's inverse condemnation procedure. 473 U. S., at 197. The unanticipated consequence of this ruling was that a takings plaintiff who complied with *Williamson County* and brought a compensation claim in state court would—on proceeding to federal court after the unsuccessful state claim—have the federal claim barred because the full faith and credit statute required the federal court to give preclusive effect to the state court's decision. *San Remo Hotel, L. P.* v. *City and County of San Francisco*, 545 U. S. 323, 347. Pp. 5-6.

(b) This Court has long recognized that property owners may bring Fifth Amendment claims for compensation as soon as their property has been taken, regardless of any other post-taking remedies that may be available to the property owner. See *Jacobs* v. *United States*, 290 U. S. 13. The Court departed from that understanding in *Williamson County* and held that a taking gives rise not to a constitutional right to just compensation, but instead gives a right to a state law procedure that will eventually result in just compensation. Just two years after *Williamson County*, however, the Court returned to its traditional understanding of the Fifth Amendment, holding that the compensation remedy is required by the Constitution in the event of a taking. *First English Evangelical Lutheran Church of Glendale* v. *County of Los Angeles*, 482 U. S. 304. A property owner acquires a right to compensation immediately upon an uncompensated taking because the taking itself violates the Fifth Amendment. See *San Diego Gas & Elec. Co.* v. *San Diego*, 450 U. S. 621, 654 (Brennan, J., dissenting). The property owner may, therefore, bring a claim under §1983 for the deprivation of a constitutional right at that time. Pp. 6-12.

(c) *Williamson County*'s understanding of the Takings Clause was drawn from *Ruckelshaus* v. *Monsanto Co.*, 467 U. S. 986, where the plaintiff sought to enjoin a federal statute because it effected a taking, even though the statute set up a mandatory arbitration procedure for obtaining compensation. *Id.*, at 1018. That case does not support *Williamson County*, however, because Congress—unlike the States—is free to require plaintiffs to exhaust administrative remedies before bringing constitutional claims. *Williamson County* also analogized its new state-litigation requirement to federal takings practice under the Tucker Act, but a claim for just compensation brought under the Tucker Act is not a prerequisite to a Fifth Amendment takings claim—it *is* a Fifth Amendment takings claim. *Williamson County* also looked to *Parratt* v. *Taylor*, 451 U. S. 527. But *Parratt* was not a takings case at all, and the analogy from the due process context to the takings context is strained. The poor reasoning of *Williamson County* may be partially explained by the cir-

3 *3

cumstances in which the state-litigation issue reached the Court, which may not have permitted the Court to adequately test the logic of the state-litigation requirement or consider its implications. Pp. 12-16.

(d) Respondents read too broadly statements in prior opinions that the Takings Clause "does not provide or require that compensation shall be actually paid in advance of the occupancy of the land to be taken. But the owner is entitled to reasonable, certain and adequate provision for obtaining compensation" after a taking. *Cherokee Nation* v. *Southern Kansas R. Co.*, 135 U. S. 641, 659. Those statements concerned requests for injunctive relief, and the availability of subsequent compensation meant that such an equitable remedy was not available. Simply because the property owner was not entitled to injunctive relief at the time of the taking does not mean there was no violation of the Takings Clause at that time. The history of takings litigation provides valuable context. At the time of the founding, there usually was no compensation remedy available to property owners, who could obtain only retrospective damages, as well as an injunction ejecting the government from the property going forward. But in the 1870s, as state courts began to recognize implied rights of action for damages under the state equivalents of the Takings Clause, they declined to grant injunctions because property owners had an adequate remedy at law. Congress enabled property owners to obtain compensation for takings by the Federal Government when it passed the Tucker Act in 1887, and this Court subsequently joined the state courts in holding that the compensation remedy is required by the Takings Clause itself. Today, because the federal and nearly all state governments provide just compensation remedies to property owners who have suffered a taking, equitable relief is generally unavailable. As long as an adequate provision for obtaining just compensation exists, there is no basis to enjoin government action effecting a taking. Pp. 16-19.

2. The state-litigation requirement of *Williamson County* is overruled. Several factors counsel in favor of this decision. *Williamson County* was poorly reasoned and conflicts with much of the Court's takings jurisprudence. Because of its shaky foundations, the rationale for the state-litigation requirement has been repeatedly recast by this Court and the defenders of *Williamson County*. The state-litigation requirement also proved to be unworkable in practice because the *San Remo* preclusion trap prevented takings plaintiffs from ever bringing their claims in federal court, contrary to the expectations of the *Williamson County* Court. Finally, there are no reliance interests on the state-litigation requirement. As long as post-taking compensation remedies are available, governments need not

4 *4

fear that federal courts will invalidate their regulations as unconstitutional. Pp. 20-23.

862 F. 3d 310, vacated and remanded.

ROBERTS, C. J., delivered the opinion of the Court, in which THOMAS, ALITO, GORSUCH, and KAVANAUGH, JJ., joined. THOMAS, J., filed a concurring opinion. KAGAN, J., filed a dissenting opinion, in which GINSBURG, BREYER, and SOTOMAYOR, JJ., joined. *5

5 Opinion of the Court NOTICE: This opinion is subject to formal revision before publication in the preliminary print of the United States Reports. Readers are requested to notify the Reporter of Decisions, Supreme Court of the United States, Washington, D. C. 20543, of any typographical or other formal errors, in order that corrections may be made before the preliminary print goes to press.

ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT CHIEF JUSTICE ROBERTS delivered the opinion of the Court.

The Takings Clause of the Fifth Amendment states that "private property [shall not] be taken for public use, without just compensation." In *Williamson County Regional Planning Comm'n* v. *Hamilton Bank of Johnson City*, 473 U. S. 172 (1985), we held that a property owner whose property has been taken by a local government has not suffered a violation of his Fifth Amendment rights—and thus cannot bring a federal takings claim in federal court—until a state court has denied his claim for just compensation under state law.

The *Williamson County* Court anticipated that if the property owner failed to secure just compensation under state law in state court, he would be able to bring a "ripe" federal takings claim in federal court. See *id*., at 194. But as we later held in *San Remo Hotel*, *L. P.* v. *City and County of San Francisco*, 545 U. S. 323 (2005), a state court's resolution of a claim for just compensation under state law generally has preclusive effect in any subsequent federal suit.
6 The takings plaintiff thus finds himself in a *6 Catch-22: He cannot go to federal court without going to state court first; but if he goes to state court and loses, his claim will be barred in federal court. The federal claim dies aborning.

The *San Remo* preclusion trap should tip us off that the state-litigation requirement rests on a mistaken view of the Fifth Amendment. The Civil Rights Act of 1871, after all, guarantees "a federal forum for claims of unconstitutional treatment at the hands of state officials," and the settled rule is that "exhaustion of state remedies 'is *not* a prerequisite to an action under [42 U. S. C.] §1983.'" *Heck* v. *Humphrey*, 512 U. S. 477, 480 (1994) (quoting *Patsy* v. *Board of Regents of Fla*., 457 U. S. 496, 501 (1982)). But the guarantee of a federal forum rings hollow for takings plaintiffs, who are forced to litigate their claims in state court.

We now conclude that the state-litigation requirement imposes an unjustifiable burden on takings plaintiffs, conflicts with the rest of our takings jurisprudence, and must be overruled. A property owner has an actionable Fifth Amendment takings claim when the government takes his property without paying for it. That does not mean that the government must provide compensation in advance of a taking or risk having its action invalidated: So long as the property owner has some way to obtain compensation after the fact, governments need not fear that courts will enjoin their activities. But it does mean that the property owner has suffered a violation of his Fifth Amendment rights when the government takes his property without just compensation, and therefore may bring his claim in federal court under §1983 at that time.

I

Petitioner Rose Mary Knick owns 90 acres of land in Scott Township, Pennsylvania, a small community just north of Scranton. Knick lives in a
7 single-family home on *7 the property and uses the rest of the land as a grazing area for horses and other farm animals. The property includes a small graveyard where the ancestors of Knick's neighbors are allegedly buried. Such family cemeteries are fairly common in Pennsylvania, where "backyard burials" have long been permitted.

In December 2012, the Township passed an ordinance requiring that "[a]ll cemeteries . . . be kept open and accessible to the general public during daylight hours." The ordinance defined a "cemetery" as "[a] place or area of ground, whether contained on private or public property, which has been set apart for or otherwise utilized as a burial place for deceased human beings." The ordinance also authorized Township "code enforcement" officers to "enter upon any property" to determine the existence and location of a cemetery. App. 21-23.

In 2013, a Township officer found several grave markers on Knick's property and notified her that she was violating the ordinance by failing to open

the cemetery to the public during the day. Knick responded by seeking declaratory and injunctive relief in state court on the ground that the ordinance effected a taking of her property. Knick did not seek compensation for the taking by bringing an "inverse condemnation" action under state law. Inverse condemnation is "a cause of action against a governmental defendant to recover the value of property which has been taken in fact by the governmental defendant." *United States* v. *Clarke*, 445 U. S. 253, 257 (1980) (quoting D. Hagman, Urban Planning and Land Development Control Law 328 (1971)). Inverse condemnation stands in contrast to direct condemnation, in which the government initiates proceedings to acquire title under its eminent domain authority. Pennsylvania, like every other State besides Ohio, provides a state inverse
8 condemnation action. 26 Pa. Cons. *8 Stat. §502(c) (2009).

[1] [1] A property owner in Ohio who has suffered a taking without compensation must seek a writ of mandamus to compel the government to initiate condemnation proceedings. See, *e.g.*, *State ex rel. Doner* v. *Zody*, 130 Ohio St. 3d 446, 2011-Ohio-6117, 958 N. E. 2d 1235.

In response to Knick's suit, the Township withdrew the violation notice and agreed to stay enforcement of the ordinance during the state court proceedings. The court, however, declined to rule on Knick's request for declaratory and injunctive relief because, without an ongoing enforcement action, she could not demonstrate the irreparable harm necessary for equitable relief.

Knick then filed an action in Federal District Court under 42 U. S. C. §1983, alleging that the ordinance violated the Takings Clause of the Fifth Amendment.[2] The District Court dismissed Knick's takings claim under *Williamson County* because she had not pursued an inverse condemnation action in state court. 2016 WL 4701549, *5-*6 (MD Pa., Sept. 8, 2016). On appeal, the Third Circuit noted that the ordinance was "extraordinary and constitutionally suspect," but affirmed the District Court in light of *Williamson County*. 862 F. 3d 310, 314 (2017).

[2] Section 1983 provides: "Every person who, under color of any statute, ordinance, regulation, custom, or usage, of any State or Territory or the District of Columbia, subjects, or causes to be subjected, any citizen of the United States or other person within the jurisdiction thereof to the deprivation of any rights, privileges, or immunities secured by the Constitution and laws, shall be liable to the party injured in an action at law . . . ."

We granted certiorari to reconsider the holding of *Williamson County* that property owners must seek just compensation under state law in state court before bringing a federal takings claim under §1983. 583 U. S. ___ (2018).

9 *9 II

In *Williamson County*, a property developer brought a takings claim under §1983 against a zoning board that had rejected the developer's proposal for a new subdivision. *Williamson County* held that the developer's Fifth Amendment claim was not "ripe" for two reasons. First, the developer still had an opportunity to seek a variance from the appeals board, so any taking was therefore not yet final. 473 U. S., at 186-194. Knick does not question the validity of this finality requirement, which is not at issue here.

The second holding of *Williamson County* is that the developer had no federal takings claim because he had not sought compensation "through the procedures the State ha[d] provided for doing so." *Id.*, at 194. That is the holding Knick asks us to overrule. According to the Court, "if a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the [Takings] Clause until it has used the procedure and been denied just compensation." *Id.*, at 195. The Court concluded that the developer's federal takings claim was "premature"

because he had not sought compensation through the State's inverse condemnation procedure. *Id*., at 197.

The unanticipated consequences of this ruling were not clear until 20 years later, when this Court decided *San Remo*. In that case, the takings plaintiffs complied with *Williamson County* and brought a claim for compensation in state court. 545 U. S., at 331. The complaint made clear that the plaintiffs sought relief only under the takings clause of the State Constitution, intending to reserve their Fifth Amendment claim for a later federal suit if the state suit proved unsuccessful. *Id*., at 331-332. When that happened, however, and the plaintiffs proceeded to federal court, they found that their federal claim was barred. This
10 Court held that the full faith and credit *10 statute, 28 U. S. C. §1738, required the federal court to give preclusive effect to the state court's decision, blocking any subsequent consideration of whether the plaintiff had suffered a taking within the meaning of the Fifth Amendment. 545 U. S., at 347. The adverse state court decision that, according to *Williamson County*, gave rise to a ripe federal takings claim simultaneously barred that claim, preventing the federal court from ever considering it.

The state-litigation requirement relegates the Takings Clause "to the status of a poor relation" among the provisions of the Bill of Rights. *Dolan* v. *City of Tigard*, 512 U. S. 374, 392 (1994). Plaintiffs asserting any other constitutional claim are guaranteed a federal forum under §1983, but the state-litigation requirement "hand[s] authority over federal takings claims to state courts." *San Remo*, 545 U. S., at 350 (Rehnquist, C. J., concurring in judgment). Fidelity to the Takings Clause and our cases construing it requires overruling *Williamson County* and restoring takings claims to the full-fledged constitutional status the Framers envisioned when they included the Clause among the other protections in the Bill of Rights.

III

A

Contrary to *Williamson County*, a property owner has a claim for a violation of the Takings Clause as soon as a government takes his property for public use without paying for it. The Clause provides: "[N]or shall private property be taken for public use, without just compensation." It does not say: "Nor shall private property be taken for public use, without an available procedure that will result in compensation." If a local government takes private property without paying for it, that government has violated the Fifth Amendment—just as the Takings Clause says—without regard to subsequent state court proceedings. And the
11 property owner may sue the gov- *11 ernment at that time in federal court for the "deprivation" of a right "secured by the Constitution." 42 U. S. C. §1983.

We have long recognized that property owners may bring Fifth Amendment claims against the Federal Government as soon as their property has been taken. The Tucker Act, which provides the standard procedure for bringing such claims, gives the Court of Federal Claims jurisdiction to "render judgment upon any claim against the United States founded either upon the Constitution" or any federal law or contract for damages "in cases not sounding in tort." 28 U. S. C. §1491(a)(1). We have held that "[i]f there is a taking, the claim is 'founded upon the Constitution' and within the jurisdiction of the Court of Claims to hear and determine." *United States* v. *Causby*, 328 U. S. 256, 267 (1946). And we have explained that "the act of taking" is the "event which gives rise to the claim for compensation." *United States* v. *Dow*, 357 U. S. 17, 22 (1958).

The Fifth Amendment right to full compensation arises at the time of the taking, regardless of post-taking remedies that may be available to the property owner. That principle was confirmed in *Jacobs* v. *United States*, 290 U. S. 13 (1933), where we held that a property owner found to have a valid takings claim is entitled to compensation as if it had been "paid contemporaneously with the taking"—that is, the compensation must generally consist of the total value of the property when taken, plus interest

from that time. *Id*., at 17 (quoting *Seaboard Air Line R. Co*. v. *United States*, 261 U. S. 299, 306 (1923)). We rejected the view of the lower court that a property owner is entitled to interest only when the government provides a particular remedy —direct condemnation proceedings—and not when the owner brings a takings suit under the Tucker Act. "The form of the remedy d[oes] not qualify the right. It rest[s] upon the Fifth Amendment." 290 U. S., at 16.

12 *12 *Jacobs* made clear that, no matter what sort of procedures the government puts in place to remedy a taking, a property owner has a Fifth Amendment entitlement to compensation as soon as the government takes his property without paying for it. Whether the government does nothing, forcing the owner to bring a takings suit under the Tucker Act, or whether it provides the owner with a statutory compensation remedy by initiating direct condemnation proceedings, the owner's claim for compensation "rest[s] upon the Fifth Amendment."

Although *Jacobs* concerned a taking by the Federal Government, the same reasoning applies to takings by the States. The availability of any particular compensation remedy, such as an inverse condemnation claim under state law, cannot infringe or restrict the property owner's federal constitutional claim—just as the existence of a state action for battery does not bar a Fourth Amendment claim of excessive force. The fact that the State has provided a property owner with a procedure that may subsequently result in just compensation cannot deprive the owner of his Fifth Amendment right to compensation under the Constitution, leaving only the state law right. And that is key because it is the existence of the Fifth Amendment right that allows the owner to proceed directly to federal court under §1983.

Williamson County had a different view of how the Takings Clause works. According to *Williamson County*, a taking does not give rise to a federal constitutional right to just compensation at that time, but instead gives a right to a state law procedure that will eventually result in just compensation. As the Court put it, "if a State provides an adequate procedure for seeking just compensation, the property owner cannot claim a violation of the [Takings] Clause until it has used the procedure and been denied just compensation." 473 U. S., at 195. In the absence of a state remedy,

13 the Fifth Amendment right to compensation *13 would attach immediately. But, under *Williamson County*, the presence of a state remedy qualifies the right, preventing it from vesting until exhaustion of the state procedure. That is what *Jacobs* confirmed could not be done.

Just two years after *Williamson County*, in *First English Evangelical Lutheran Church of Glendale* v. *County of Los Angeles*, 482 U. S. 304 (1987), the Court returned to the understanding that the Fifth Amendment right to compensation automatically arises at the time the government takes property without paying for it. Relying heavily on *Jacobs* and other Fifth Amendment precedents neglected by *Williamson County*, *First English* held that a property owner is entitled to compensation for the temporary loss of his property. We explained that "government action that works a taking of property rights necessarily implicates the 'constitutional obligation to pay just compensation.'" 482 U. S., at 315. Because of "the self-executing character" of the Takings Clause "with respect to compensation," a property owner has a constitutional claim for just compensation at the time of the taking. *Ibid*. (quoting 6 P. Nichols, Eminent Domain §25.41 (3d rev. ed. 1972)). The government's post-taking actions (there, repeal of the challenged ordinance) cannot nullify the property owner's existing Fifth Amendment right: "[W]here the government's activities have already worked a taking of all use of property, no subsequent action by the government can relieve it of the duty to provide compensation." 482 U. S., at 321.

3 [3] *First English* distinguished *Williamson County* in a footnote, explaining that the case addressed only "whether the constitutional claim was ripe for review" before the State denied compensation. 482 U. S., at 320, n. 10. But *Williamson County*

was based on the premise that there was no Fifth Amendment claim *at all* until the State denies compensation. Having rejected that premise, *First English* eliminated the rationale for the state-litigation requirement. The author of *First English* later recognized that it was "not clear . . . that *Williamson County* was correct in demanding that . . . the claimant must seek compensation in state court before bringing a federal takings claim in federal court." *San Remo Hotel, L. P.* v. *City and County of San Francisco*, 545 U. S. 323, 349 (2005) (Rehnquist, C. J., concurring in judgment).

In holding that a property owner acquires an irrevocable right to just compensation immediately upon a taking, *First English* adopted a position Justice Brennan had taken in an earlier dissent. See *id*., at 315, 318 (quoting and citing *San Diego Gas & Elec. Co.* v. *San Diego*, 450 U. S. 621, 654, 657 (1981) (Brennan, J., dissenting)).[4] In that opinion, Justice Brennan explained that "once there is a 'taking,' compensation *must* be awarded" because "[a]s soon as private property has been taken, whether through formal condemnation proceedings, occupancy, physical invasion, or regulation, the landowner has *already* suffered a constitutional violation." *Id*., at 654.

[4] Justice Brennan was joined by Justices Stewart, Marshall, and Powell. The majority did not disagree with Justice Brennan's analysis of the merits, but concluded that the Court lacked jurisdiction to address the question presented. Justice Rehnquist, concurring on the jurisdictional issue, noted that if he were satisfied that jurisdiction was proper, he "would have little difficulty in agreeing with much of what is said in the dissenting opinion." 450 U. S., at 633-634. The Court reached the merits of the question presented in *San Diego* in *First English*, adopting Justice Brennan's view in an opinion by Chief Justice Rehnquist.

First English embraced that view, reaffirming that "in the event of a taking, the compensation remedy is required by the Constitution." 482 U. S., at 316; see *ibid*., n. 9 (rejecting the view that "the Constitution does not, of its own force, furnish a basis for a court to award money damages against the government" (quoting Brief for United States as *Amicus Curiae* 14)). Compensation under the Takings Clause is a remedy for the "constitutional violation" that "the landowner has *already* suffered" at the time of the uncompensated taking.
15 *San Diego Gas & Elec. Co.*, *15 450 U. S., at 654 (Brennan, J., dissenting); see *First English*, 482 U. S., at 315.

A later payment of compensation may remedy the constitutional violation that occurred at the time of the taking, but that does not mean the violation never took place. The violation is the only reason compensation was owed in the first place. A bank robber might give the loot back, but he still robbed the bank. The availability of a subsequent compensation remedy for a taking without compensation no more means there never was a constitutional violation in the first place than the availability of a damages action renders negligent conduct compliant with the duty of care.

In sum, because a taking without compensation violates the self-executing Fifth Amendment at the time of the taking, the property owner can bring a federal suit at that time. Just as someone whose property has been taken by the Federal Government has a claim "founded . . . upon the Constitution" that he may bring under the Tucker Act, someone whose property has been taken by a local government has a claim under §1983 for a "deprivation of [a] right[] . . . secured by the Constitution" that he may bring upon the taking in federal court. The "general rule" is that plaintiffs may bring constitutional claims under §1983 "without first bringing any sort of state lawsuit, even when state court actions addressing the underlying behavior are available." D. Dana & T. Merrill, Property: Takings 262 (2002); see *McNeese* v. *Board of Ed. for Community Unit School Dist. 187*, 373 U. S. 668, 672 (1963) (observing that it would defeat the purpose of

§1983 "if we held that assertion of a federal claim in a federal court must await an attempt to vindicate the same claim in a state court"); *Monroe* v. *Pape*, 365 U. S. 167, 183 (1961) ("The federal remedy is supplementary to the state remedy, and the latter need not be first sought and refused before the federal one is invoked."). This
16 is as true for *16 takings claims as for any other claim grounded in the Bill of Rights.

B

Williamson County effectively established an exhaustion requirement for §1983 takings claims when it held that a property owner must pursue state procedures for obtaining compensation before bringing a federal suit. But the Court did not phrase its holding in those terms; if it had, its error would have been clear. Instead, *Williamson County* broke with the Court's longstanding position that a property owner has a constitutional claim to compensation at the time the government deprives him of his property, and held that there can be no uncompensated taking, and thus no Fifth Amendment claim actionable under §1983, until the property owner has tried and failed to obtain compensation through the available state procedure. "[U]ntil it has used the procedure and been denied just compensation," the property owner "'has no claim against the Government' for a taking." 473 U. S., at 194-195 (quoting *Ruckelshaus* v. *Monsanto Co.*, 467 U. S. 986, 1018, n. 21 (1984)).

Williamson County drew that understanding of the Clause from *Ruckelshaus* v. *Monsanto Co.*, a decision from the prior Term. *Monsanto* did not involve a takings claim for just compensation. The plaintiff there sought to enjoin a federal statute because it effected a taking, even though the statute set up a special arbitration procedure for obtaining compensation, and the plaintiff could bring a takings claim pursuant to the Tucker Act if arbitration did not yield sufficient compensation. 467 U. S., at 1018. The Court rejected the plaintiff's claim because "[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."
17 *Id.*, at 1016 (footnote *17 omitted). That much is consistent with our precedent: Equitable relief was not available because monetary relief was under the Tucker Act.

That was enough to decide the case. But *Monsanto* went on to say that if the plaintiff obtained compensation in arbitration, then "no taking has occurred and the [plaintiff] has no claim against the Government." *Id.*, at 1018, n. 21. Certainly it is correct that a fully compensated plaintiff has no further claim, but that is because the taking has been *remedied* by compensation, not because there was *no taking* in the first place. See *First English*, 482 U. S., at 316, n. 9. The statute in *Monsanto* simply required the plaintiff to attempt to vindicate its claim to compensation through arbitration before proceeding under the Tucker Act. The case offers no support to *Williamson County* in this regard, because Congress—unlike the States—is free to require plaintiffs to exhaust administrative remedies before bringing constitutional claims. See *McCarthy* v. *Madigan*, 503 U. S. 140, 144 (1992) ("Where Congress specifically mandates, exhaustion is required.").

Williamson County also relied on *Monsanto* when it analogized its new state-litigation requirement to federal takings practice, stating that "taking[s] 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. But the Court was simply confused. A claim for just compensation brought under the Tucker Act is not a prerequisite to a Fifth Amendment takings claim—it *is* a Fifth Amendment takings claim. A party who loses a Tucker Act suit has nowhere else to go to seek compensation for an alleged taking.

Other than *Monsanto*, the principal case to which *Williamson County* looked was *Parratt* v. *Taylor*, 451 U. S. 527 (1981). Like *Monsanto*, *Parratt* did not involve a takings claim for just compensation.
18 Indeed, it was not a *18 takings case at all. *Parratt* held that a prisoner deprived of $23.50 worth of

hobby materials by the rogue act of a state employee could not state a due process claim if the State provided adequate post-deprivation process. 451 U. S., at 543-544. But the analogy from the due process context to the takings context is strained, as *Williamson County* itself recognized. See 473 U. S., at 195, n. 14. It is not even possible for a State to provide pre-deprivation due process for the unauthorized act of a single employee. That is quite different from the taking of property *by the government* through physical invasion or a regulation that destroys a property's productive use.

The poor reasoning of *Williamson County* may be partially explained by the circumstances in which the state-litigation issue reached the Court. The Court granted certiorari to decide whether the Fifth Amendment entitles a property owner to just compensation when a regulation temporarily deprives him of the use of his property. (*First English* later held that the answer was yes.) As *amicus curiae* in support of the local government, the United States argued in this Court that the developer could not state a Fifth Amendment claim because it had not pursued an inverse condemnation suit in state court. Neither party had raised that argument before.[5] The Court then adopted the reasoning of the Solicitor General in an alternative holding, even though the case could have been resolved solely on the narrower and
19 settled ground that no *19 taking had occurred because the zoning board had not yet come to a final decision regarding the developer's proposal. In these circumstances, the Court may not have adequately tested the logic of the state-litigation requirement or considered its implications, most notably the preclusion trap later sprung by *San Remo*. That consequence was totally unanticipated in *Williamson County*.

[5] The Solicitor General continues this tradition here, arguing for the first time as *amicus curiae* that state inverse condemnation claims "aris[e] under" federal law and can be brought in federal court under 28 U. S. C. §1331 through the *Grable* doctrine. Brief for United States as *Amicus Curiae* 22-24; see *Grable & Sons Metal Products, Inc.* v. *Darue Engineering & Mfg.*, 545 U. S. 308 (2005). Because we agree with the Solicitor General's principal contention that federal takings claims can be brought immediately under §1983, we have no occasion to consider his novel §1331 argument.

The dissent, doing what respondents do not even dare to attempt, defends the original rationale of *Williamson County*—that there is no Fifth Amendment violation, and thus no Fifth Amendment claim, until the government denies the property owner compensation in a subsequent proceeding.[6] But although the dissent makes a more thoughtful and considered argument than *Williamson County*, it cannot reconcile its view with our repeated holdings that a property owner acquires a constitutional right to compensation at the time of the taking. See *supra*, at 7-11. The only reason that a taking would automatically entitle a property owner to the remedy of compensation is that, as Justice Brennan explained, with the uncompensated taking "the landowner has *already*
20 suf- *20 fered a constitutional violation." *San Diego Gas & Elec. Co.*, 450 U. S., at 654 (dissenting opinion). The dissent here provides no more reason to resist that conclusion than did *Williamson County*.

[6] The dissent thinks that respondents still press this theory. *Post*, at 6 n. 3. But respondents instead describe *Williamson County* as resting on an understanding not of the elements of a federal takings claim but of the scope of 42 U. S. C. §1983. They even go so far as to rewrite petitioner's question presented in such terms. Brief for Respondents i. For respondents, it does not matter whether a property owner has a Fifth Amendment claim at the time of a taking. What matters is that, in respondents' view, no constitutional violation occurs for purposes of §1983 until the government has subsequently denied compensation. That characterization has no basis in the *Williamson County* opinion, which did not even quote §1983

and stated that the Court's reasoning applied with equal force to takings by the Federal Government, not covered by §1983. 473 U. S., at 195. Respondents' attempt to recast the state-litigation requirement as a §1983-specific rule fails for the same reason as the logic of *Williamson County*—a property owner has a Fifth Amendment claim for a violation of the Takings Clause as soon as the government takes his property without paying for it.

C

The Court in *Williamson County* relied on statements in our prior opinions that the Clause "does not provide or require that compensation shall be actually paid in advance of the occupancy of the land to be taken. But the owner is entitled to reasonable, certain and adequate provision for obtaining compensation" after a taking. *Cherokee Nation* v. *Southern Kansas R. Co.*, 135 U. S. 641, 659 (1890). Respondents rely on the same cases in contending that uncompensated takings for which compensation is subsequently available do not violate the Fifth Amendment at the time of the taking. But respondents read those statements too broadly. They concerned requests for injunctive relief, and the availability of subsequent compensation meant that such an equitable remedy was not available. See *Regional Rail Reorganization Act Cases*, 419 U. S. 102, 107, 149 (1974) (reversing a decision "enjoin[ing]" the enforcement of a federal statute because "the availability of the Tucker Act guarantees an adequate remedy at law for any taking which might occur"); *Hurley* v. *Kincaid*, 285 U. S. 95, 99, 105 (1932) (rejecting a request to "enjoin the carrying out of any work" on a flood control project because the Tucker Act provided the plaintiff with "a plain, adequate, and complete remedy at law"). Simply because the property owner was not entitled to injunctive relief at the time of the taking does not mean there was no violation of the Takings Clause at that time.

The history of takings litigation provides valuable context. At the time of the founding there usually was no compensation remedy available to property owners. On occasion, when a legislature
21 authorized a particular gov- *21 ernment action that took private property, it might also create a special owner-initiated procedure for obtaining compensation. But there were no general causes of action through which plaintiffs could obtain compensation for property taken for public use. Brauneis, The First Constitutional Tort: The Remedial Revolution in Nineteenth-Century State Just Compensation Law, 52 Vand. L. Rev. 57, 69-70, and n. 33 (1999).

Until the 1870s, the typical recourse of a property owner who had suffered an uncompensated taking was to bring a common law trespass action against the responsible corporation or government official. The official would then raise the defense that his trespass was lawful because authorized by statute or ordinance, and the plaintiff would respond that the law was unconstitutional because it provided for a taking without just compensation. If the plaintiff prevailed, he nonetheless had no way at common law to obtain money damages for a permanent taking—that is, just compensation for the total value of his property. He could obtain only retrospective damages, as well as an injunction ejecting the government from his property going forward. See *id.*, at 67-69, 97-99.

As Chancellor Kent explained when granting a property owner equitable relief, the Takings Clause and its analogs in state constitutions required that "a fair compensation must, in all cases, be *previously* made to the individuals affected." *Gardner* v. *Newburgh*, 2 Johns. Ch. 162, 166 (N. Y. 1816) (emphasis added). If a government took property without payment, a court would set aside the taking because it violated the Constitution and order the property restored to its owner. The Framers meant to prohibit the Federal Government from *taking* property without paying for it. Allowing the government to *keep* the property pending subsequent compensation to the owner, in proceedings that hardly existed in 1787, was not what they envisioned.

22 *22 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. See *Callender* v. *Marsh*, 18 Mass. 418, 430-431 (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."). But in the 1870s, as state courts began to recognize implied rights of action for damages under the state equivalents of the Takings Clause, they declined to grant injunctions because property owners had an adequate remedy at law. See, *e.g.*, *Stetson* v. *Chicago & Evanston R. Co.*, 75 Ill. 74, 78 (1874) ("What injury, if any, [the property owner] has sustained, may be compensated by damages recoverable by an action at law."); see also Brauneis, *supra*, at 97-99, 110-112. On the federal level, Congress enabled property owners to obtain compensation for takings in federal court when it passed the Tucker Act in 1887, and we subsequently joined the state courts in holding that the compensation remedy is required by the Takings Clause itself. See *First English*, 482 U. S., at 316 (collecting cases).

Today, because the federal and nearly all state governments provide just compensation remedies to property owners who have suffered a taking, equitable relief is generally unavailable. As long as an adequate provision for obtaining just compensation exists, there is no basis to enjoin the government's action effecting a taking. But that is because, as the Court explained in *First English*, such a procedure is a remedy for a taking that violated the Constitution, not because the
23 availability of the procedure *23 somehow prevented the violation from occurring in the first place. See *supra*, at 9-11.

7 [7] Among the cases invoking the *Cherokee Nation* language that the parties have raised, only one, *Yearsley* v. *W. A. Ross Constr. Co.*, 309 U. S. 18 (1940), rejected a demand for compensation. *Yearsley* concerned a state tort suit alleging a taking by a contractor building dikes for the Federal Government. In ruling for the contractors, we suggested that the taking did not violate the Fifth Amendment because the property owner had the opportunity to pursue a claim for just compensation under the Tucker Act. As explained, however, a claim for compensation brought under the Tucker Act *is* a claim for a violation of the Fifth Amendment; it does not prevent a violation from occurring. Regardless, *Yearsley* was right to hold that the contractors were immune from suit. Because the Tucker Act provides a complete remedy for any taking by the Federal Government, it "excludes liability of the Government's representatives lawfully acting on its behalf in relation to the taking," barring the plaintiffs from seeking any relief from the contractors themselves. *Id.*, at 22.

The dissent contends that our characterization of *Cherokee Nation* effectively overrules "a hundred-plus years of legal rulings." *Post*, at 6 (opinion of KAGAN, J.). But under today's decision every one of the cases cited by the dissent would come out the same way—the plaintiffs would not be entitled to the relief they requested because they could instead pursue a suit for compensation. The premise of such a suit for compensation is that the property owner has already suffered a violation of the Fifth Amendment that may be remedied by money damages.

8 [8] The dissent also asserts that today's ruling "betrays judicial federalism." *Post*, at 15. But since the Civil Rights Act of 1871, part of "judicial federalism" has been the availability of a federal cause of action when a local government violates the Constitution. 42 U. S. C. §1983. Invoking that federal protection in the face of state

> action violating the Fifth Amendment cannot properly be regarded as a betrayal of federalism.

* * *

We conclude that a government violates the Takings Clause when it takes property without
24 compensation, and *24 that a property owner may bring a Fifth Amendment claim under §1983 at that time. That does not as a practical matter mean that government action or regulation may not proceed in the absence of contemporaneous compensation. Given the availability of post-taking compensation, barring the government from acting will ordinarily not be appropriate. But because the violation is complete at the time of the taking, pursuit of a remedy in federal court need not await any subsequent state action. Takings claims against local governments should be handled the same as other claims under the Bill of Rights. *Williamson County* erred in holding otherwise.

IV

The next question is whether we should overrule *Williamson County*, or whether *stare decisis* counsels in favor of adhering to the decision, despite its error. The doctrine of *stare decisis* reflects a judgment "that 'in most matters it is more important that the applicable rule of law be settled than that it be settled right.'" *Agostini* v. *Felton*, 521 U. S. 203, 235 (1997) (quoting *Burnet* v. *Coronado Oil & Gas Co.*, 285 U. S. 393, 406 (1932) (Brandeis, J., dissenting)). The doctrine "is at its weakest when we interpret the Constitution," as we did in *Williamson County*, because only this Court or a constitutional amendment can alter our holdings. *Agostini*, 521 U. S., at 235.

We have identified several factors to consider in deciding whether to overrule a past decision, including "the quality of [its] reasoning, the workability of the rule it established, its consistency with other related decisions, . . . and reliance on the decision." *Janus* v. *State, County, and Municipal Employees*, 585 U. S. ___, ___-___ (2018) (slip op., at 34-35). All of these factors counsel in favor of overruling *Williamson County*.

Williamson County was not just wrong. Its reasoning was exceptionally ill founded and
25 conflicted with much of *25 our takings jurisprudence. See *supra*, at 12-14. Its key conclusion, which it drew from unnecessary language in *Monsanto*—that a property owner does not have a ripe federal takings claim until he has unsuccessfully pursued an initial state law claim for just compensation—ignored *Jacobs* and many subsequent decisions holding that a property owner acquires a Fifth Amendment right to compensation at the time of a taking. This contradiction was on stark display just two years later in *First English*.

The decision has come in for repeated criticism over the years from Justices of this Court and many respected commentators. See *San Remo*, 545 U. S., at 348 (Rehnquist, C. J., joined by O'Connor, Kennedy, and THOMAS, JJ., concurring in judgment); *Arrigoni Enterprises, LLC* v. *Durham*, 578 U. S. ___ (2016) (THOMAS, J., joined by Kennedy, J., dissenting from denial of certiorari); Merrill, Anticipatory Remedies for Takings, 128 Harv. L. Rev. 1630, 1647-1649 (2015); McConnell, *Horne* and the Normalization of Takings Litigation: A Response to Professor Echeverria, 43 Env. L. Rep. 10749, 10751 (2013); Friedman, Under the Law of Federal Jurisdiction: Allocating Cases Between Federal and State Courts, 104 Colum. L. Rev. 1211, 1264 (2004); Monaghan, State Law Wrongs, State Law Remedies, and the Fourteenth Amendment, 86 Colum. L. Rev. 979, 989 (1986). Even the academic defenders of the state-litigation requirement base it on federalism concerns (although they do not reconcile those concerns with the settled construction of §1983) rather than the reasoning of the opinion itself. See Echeverria, *Horne* v. *Department of Agriculture:* An Invitation To Reexamine "Ripeness" Doctrine in Takings Litigation, 43 Env. L. Rep. 10735, 10744 (2013); Sterk, The Demise of Federal Takings Litigation, 48 Wm. & Mary L. Rev. 251, 288 (2006).

Because of its shaky foundations, the state-litigation requirement has been a rule in search of
26 a justification for *26 over 30 years. We eventually abandoned the view that the requirement is an element of a takings claim and recast it as a "prudential" ripeness rule. See *Horne* v. *Department of Agriculture*, 569 U. S. 513, 525-526 (2013); *Suitum* v. *Tahoe Regional Planning Agency*, 520 U. S. 725, 733-734 (1997). No party defends that approach here. See Brief for Respondents 37; Brief for United States as *Amicus Curiae* 19-20. Respondents have taken a new tack, adopting a §1983-specific theory at which *Williamson County* did not even hint. See n. 6, *supra*. The fact that the justification for the state-litigation requirement continues to evolve is another factor undermining the force of *stare decisis*. See *Janus*, 585 U. S., at ___ (slip op., at 23).

The state-litigation requirement has also proved to be unworkable in practice. *Williamson County* envisioned that takings plaintiffs would ripen their federal claims in state court and then, if necessary, bring a federal suit under §1983. But, as we held in *San Remo*, the state court's resolution of the plaintiff's inverse condemnation claim has preclusive effect in any subsequent federal suit. The upshot is that many takings plaintiffs never have the opportunity to litigate in a federal forum that §1983 by its terms seems to provide. That significant consequence was not considered by the Court in *Williamson County*.

The dissent argues that our constitutional holding in *Williamson County* should enjoy the "enhanced" form of *stare decisis* we usually reserve for statutory decisions, because Congress could have eliminated the *San Remo* preclusion trap by amending the full faith and credit statute. *Post*, at 17 (quoting *Kimble* v. *Marvel Entertainment*, *LLC*, 578 U. S. ___, ___ (slip op., at 8)). But takings plaintiffs, unlike plaintiffs bringing any other constitutional claim, would still have been forced to pursue relief under state law before they could bring suit in federal court. Congress could not have lifted that unjustified exhaustion requirement
27 because, under *Williamson County*, *27 a property owner had no federal claim until a state court denied him compensation.

Finally, there are no reliance interests on the state-litigation requirement. We have recognized that the force of *stare decisis* is "reduced" when rules that do not "serve as a guide to lawful behavior" are at issue. *United States* v. *Gaudin*, 515 U. S. 506, 521 (1995); see *Alleyne* v. *United States*, 570 U. S. 99, 119 (2013) (SOTOMAYOR, J., concurring). Our holding that uncompensated takings violate the Fifth Amendment will not expose governments to new liability; it will simply allow into federal court takings claims that otherwise would have been brought as inverse condemnation suits in state court.

Governments need not fear that our holding will lead federal courts to invalidate their regulations as unconstitutional. As long as just compensation remedies are available—as they have been for nearly 150 years—injunctive relief will be foreclosed. For the same reason, the Federal Government need not worry that courts will set aside agency actions as unconstitutional under the Administrative Procedure Act. 5 U. S. C. §706(2)(B). Federal courts will not invalidate an otherwise lawful uncompensated taking when the property owner can receive complete relief through a Fifth Amendment claim brought under the Tucker Act.

In light of all the foregoing, the dissent cannot, with respect, fairly maintain its extreme assertions regarding our application of the principle of *stare decisis*.

* * *

The state-litigation requirement of *Williamson County* is overruled. A property owner may bring a takings claim under §1983 upon the taking of his property without just compensation by a local government. The judgment of the United States Court of Appeals for the Third Circuit is vacated, and the case is remanded for further proceedings consistent with this opinion.

28 *It is so ordered*. *28 ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

JUSTICE THOMAS, concurring.

The Fifth Amendment's Takings Clause prohibits the government from "tak[ing]" private property "without just compensation." The Court correctly interprets this text by holding that a violation of this Clause occurs as soon as the government takes property without paying for it.

The United States, by contrast, urges us not to enforce the Takings Clause as written. It worries that requiring payment to accompany a taking would allow courts to enjoin or invalidate broad regulatory programs "merely" because the program takes property without paying for it. Brief for United States as *Amicus Curiae* 12. According to the United States, "there is a 'nearly infinite variety of ways in which government actions or regulations can affect property interests,'" and it ought to be good enough that the government "implicitly promises to pay compensation for any taking" if a property owner successfully sues the government in court. Supplemental Letter Brief for United States as *Amicus Curiae* 5 (Supp. Brief) (citing the Tucker Act, 28 U. S. C. §1491). Government officials, the United States contends, should be able to implement regulatory programs "without fear" of injunction or invalidation under the Takings Clause, "even when" the program is so far reaching that the officials "cannot determine whether a taking will occur." Supp. Brief 5.

29 *29 This "sue me" approach to the Takings Clause is untenable. The Fifth Amendment does not merely provide a damages remedy to a property owner willing to "shoulder the burden of securing compensation" after the government takes property without paying for it. *Arrigoni Enterprises, LLC* v. *Durham*, 578 U. S. ___, ___ (2016) (THOMAS, J., dissenting from denial of certiorari) (slip op., at 2). Instead, it makes just compensation a "prerequisite" to the government's authority to "tak[e] property for public use." *Ibid*. A "purported exercise of the eminent-domain power" is therefore "invalid" unless the government "pays just compensation before or at the time of its taking." *Id*., at ___ (slip op., at 3). If this requirement makes some regulatory programs "unworkable in practice," Supp. Brief 5, so be it—our role is to enforce the Takings Clause as written.

Of course, as the Court correctly explains, the United States' concerns about injunctions may be misplaced. *Ante*, at 15-18. Injunctive relief is not available when an adequate remedy exists at law. *E.g*., *Monsanto Co*. v. *Geertson Seed Farms*, 561 U. S. 139, 156 (2010). And even when relief is appropriate for a particular plaintiff, it does not follow that a court may enjoin or invalidate an entire regulatory "program," Supp. Brief 5, by granting relief "beyond the parties to the case," *Trump* v. *Hawaii*, 585 U. S. ___, ___ (2018) (THOMAS, J., concurring) (slip op., at 6); see *id*., at ___ (slip op., at 2) (expressing skepticism about "universal injunctions").

Still, "[w]hen the government repudiates [its] duty" to pay just compensation, its actions "are not only unconstitutional" but may be "tortious as well." *Monterey* v. *Del Monte Dunes at Monterey, Ltd*., 526 U. S. 687, 717 (1999) (plurality opinion). I do not understand the Court's opinion to foreclose the application of ordinary remedial principles to takings claims and related common-law tort claims, such as trespass. I therefore join it
30 in full. *30 ON WRIT OF CERTIORARI TO THE UNITED STATES COURT OF APPEALS FOR THE THIRD CIRCUIT

JUSTICE KAGAN, with whom JUSTICE GINSBURG, JUSTICE BREYER, and JUSTICE SOTOMAYOR join, dissenting.

Today, the Court formally overrules *Williamson County Regional Planning Comm'n* v. *Hamilton Bank of Johnson City*, 473 U. S. 172 (1985). But its decision rejects far more than that single case. *Williamson County* was rooted in an understanding of the Fifth Amendment's Takings Clause stretching back to the late 1800s. On that view, a government could take property so long as it provided a reliable mechanism to pay just compensation, even if the payment came after the

fact. No longer. The majority today holds, in conflict with precedent after precedent, that a government violates the Constitution whenever it takes property without advance compensation—no matter how good its commitment to pay. That conclusion has no basis in the Takings Clause. Its consequence is to channel a mass of quintessentially local cases involving complex state-law issues into federal courts. And it transgresses all usual principles of *stare decisis*. I respectfully dissent.

I

Begin with the basics—the meaning of the Takings Clause. The right that Clause confers is not to be free from government takings of property
31 for public purposes. *31 Instead, the right is to be free from those takings when the government fails to provide "just compensation." In other words, the government *can* take private property for public purposes, so long as it fairly pays the property owner. That precept, which the majority does not contest, comes straight out of the constitutional text: "[P]rivate property [shall not] be taken for public use, without just compensation." Amdt. 5. "As its language indicates, [the Takings Clause] does not prohibit the taking of private property, but instead places a condition on the exercise of that power." *First English Evangelical Lutheran Church of Glendale* v. *County of Los Angeles*, 482 U. S. 304, 314 (1987). And that constitutional choice accords with ancient principles about what governments do. The eminent domain power—the capacity to "take private property for public uses"—is an integral "attribute of sovereignty." *Boom Co.* v. *Patterson*, 98 U. S. 403, 406 (1879); see *Kohl* v. *United States*, 91 U. S. 367, 371 (1876) (The power is "essential to [the Government's] independent existence and perpetuity"). Small surprise, then, that the Constitution does not prohibit takings for public purposes, but only requires the government to pay fair value.

In that way, the Takings Clause is unique among the Bill of Rights' guarantees. It is, for example, unlike the Fourth Amendment's protection against excessive force—which the majority mistakenly proposes as an analogy. See *ante*, at 8. Suppose a law enforcement officer uses excessive force and the victim recovers damages for his injuries. Did a constitutional violation occur? Of course. The Constitution prohibits what the officer did; the payment of damages merely remedied the constitutional wrong. But the Takings Clause is different because it does not prohibit takings; to the contrary, it permits them provided the government gives just compensation. So when the government "takes and pays," it is not violating the Constitution at all. Put another way, a Takings
32 *32 Clause violation has two necessary elements. First, the government must take the property. Second, it must deny the property owner just compensation. See *Horne* v. *Department of Agriculture*, 569 U. S. 513, 525-526 (2013) ("[A] Fifth Amendment claim is premature until it is clear that the Government has both taken property *and* denied just compensation" (emphasis in original)). If the government has not done both, no constitutional violation has happened. All this is well-trod ground. See, *e.g.*, *United States* v. *Jones*, 109 U. S. 513, 518 (1883); *Albert Hanson Lumber Co.* v. *United States*, 261 U. S. 581, 586 (1923). Even the majority (despite its faulty analogy) does not contest it.

Similarly well-settled—until the majority's opinion today—was the answer to a follow-on question: At what point has the government denied a property owner just compensation, so as to complete a Fifth Amendment violation? For over a hundred years, this Court held that advance or contemporaneous payment was not required, so long as the government had established reliable procedures for an owner to later obtain just compensation (including interest for any time elapsed). The rule got its start in *Cherokee Nation* v. *Southern Kansas R. Co.*, 135 U. S. 641 (1890), where the Tribe argued that a federal statute authorizing condemnation of its property violated the Fifth Amendment because the law did not require advance payment. The Court disagreed. It held that the Takings Clause "does not provide or require that compensation shall be actually paid in

advance of the occupancy of the land to be taken" so long as the government made available to the owner "reasonable, certain and adequate provision for obtaining compensation" afterward. *Id.*, at 659. Decade after decade, the Court repeated that principle.[9] As another case put the point: The
33 Takings Clause *33 does not demand "that compensation should be made previous to the taking" so long as "adequate means [are] provided for a reasonably just and prompt ascertainment and payment of the compensation." *Crozier* v. *Krupp A. G.*, 224 U. S. 290, 306 (1912). And the Court also made clear that a statute creating a right of action against the responsible government entity generally qualified as a constitutionally adequate compensatory mechanism. See, *e.g.*, *Williams* v. *Parker*, 188 U. S. 491, 502 (1903); *Yearsley* v. *W. A. Ross Constr. Co.*, 309 U. S. 18, 20-21 (1940).

9 [10] See also, *e.g.*, *Yearsley* v. *W. A. Ross Constr. Co.*, 309 U. S. 18, 21-22 (1940); *Hurley* v. *Kincaid*, 285 U. S. 95, 104 (1932); *Dohany* v. *Rogers*, 281 U. S. 362, 365 (1930); *Joslin Mfg. Co.* v. *Providence*, 262 U. S. 668, 677 (1923); *Albert Hanson Lumber Co.* v. *United States*, 261 U. S. 581, 587 (1923); *Hayes* v. *Port of Seattle*, 251 U. S. 233, 238 (1920); *Bragg* v. *Weaver*, 251 U. S. 57, 62 (1919); *Madisonville Traction Co.* v. *Saint Bernard Mining Co.*, 196 U. S. 239, 251-252 (1905); *Williams* v. *Parker*, 188 U. S. 491, 502 (1903); *Backus* v. *Fort Street Union Depot Co.*, 169 U. S. 557, 568 (1898); *Sweet* v. *Rechel*, 159 U. S. 380, 400-402 (1895).

10 In many of these cases, the Court held as well that if payment occurs later, it must include interest. See, *e.g.*, *id.*, at 407; *Albert Hanson Lumber Co.*, 261 U. S., at 586. That requirement flows from the constitutional demand for "just" compensation: As one of the early cases explained, the property owner must be placed "in as good position pecuniarily as he would have been if his property had not been taken." *Ibid.*

Williamson County followed from those decisions as night the day. The case began when a local planning commission rejected a property owner's development proposal. The owner chose not to seek compensation through the procedure the State had created—an "inverse condemnation" action against the commission. Instead, the owner sued in federal court alleging a Takings Clause violation under 42 U. S. C. §1983. Consistent with the century's worth of precedent I have recounted above, the Court found that no Fifth Amendment violation had yet occurred. See 473 U. S., at 195. The Court first recognized that "[t]he Fifth
34 Amendment does not proscribe the *34 taking of property; it proscribes taking without just compensation." *Id.*, at 194. Next, the Court stated (citing no fewer than five precedents) that the Amendment does not demand that "compensation be paid in advance of, or contemporaneously with, the taking." *Ibid.* "[A]ll that is required," the Court continued, is that the State have provided "a 'reasonable, certain and adequate provision for obtaining compensation.'" *Ibid.* (quoting *Cherokee Nation*, 135 U. S., at 659). Here, the State had done so: Nothing suggested that the inverse condemnation procedure was inadequate. 473 U. S., at 196-197. So the property owner's claim was "not yet ripe": The owner could not "claim a violation of the [Takings] Clause until it [had] used the procedure and been denied." *Id.*, at 194-195.

So contrary to the majority's portrayal, *Williamson County* did not result from some inexplicable confusion about "how the Takings Clause works." *Ante*, at 8. Far from it. *Williamson County* built on a long line of decisions addressing the elements of a Takings Clause violation. The Court there said only two things remotely new. First, the Court found that the State's inverse condemnation procedure qualified as a "reasonable, certain and adequate" procedure. But no one in this case disputes anything to do with that conclusion—including that the equivalent Pennsylvania procedure here is similarly adequate. Second, the Court held that a §1983 suit could not be brought until a property owner had unsuccessfully invoked

the State's procedure for obtaining payment. But that was a direct function of the Court's prior holdings. Everyone agrees that a §1983 suit cannot be brought before a constitutional violation has occurred. And according to the Court's repeated decisions, a Takings Clause violation does not occur until an owner has used the government's procedures and failed to obtain just compensation. All that *Williamson County* did was to put the period on an already-completed sentence about
35 when a takings *35 claim arises.

11 [11] Contrary to the majority's description, see *ante*, at 15, and n. 6, the respondents have exactly this view of *Williamson County* (and of the cases preceding it). The respondents discuss (as I do, see *supra*, at 3-4) the "long line of precedent" holding that "the availability of a reasonable, certain, and adequate inverse-condemnation procedure fulfills the duty" of a government to pay just compensation for a taking. Brief for Respondents 22-23. The respondents then conclude (again, as I do, see *supra*, at 4-6) that *Williamson County* "sound[ly]" and "straightforwardly applied that precedent to hold that a property owner who forgoes an available and adequate inverse-condemnation remedy has not been deprived of any constitutional right and thus cannot proceed under Section 1983." Brief for Respondents 22. (Again contra the majority, the respondents' only theory of §1983 is the one everyone agrees with—that a §1983 suit cannot be brought before a constitutional violation has occurred.) So while I appreciate the compliment, I cannot claim to argue anything novel or "dar[ing]" here. *Ante*, at 15. My argument is the same as the respondents', which is the same as *Williamson County*'s, which is the same as all the prior precedents'.

Today's decision thus overthrows the Court's long-settled view of the Takings Clause. The majority declares, as against a mountain of precedent, that a government taking private property for public purposes must pay compensation at that moment or in advance. See *ante*, at 6-7. If the government fails to do so, a constitutional violation has occurred, regardless of whether "reasonable, certain and adequate" compensatory mechanisms exist. *Cherokee Nation*, 135 U. S., at 659. And regardless of how many times this Court has said the opposite before. Under cover of overruling "only" a single decision, today's opinion smashes a hundred-plus years of legal rulings to smithereens.

II

So how does the majority defend taking down *Williamson County* and its many precursors? Its decision rests on four ideas: a comparison between takings claims and other constitutional claims, a
36 resort to the Takings Clause's *36 text, and theories about two lines of this Court's precedent. All are misguided. The majority uses the term "shaky foundations." *Ante*, at 21. It knows whereof it speaks.

The first crack comes from the repeated assertion (already encountered in the majority's Fourth Amendment analogy, see *supra*, at 2) that *Williamson County* treats takings claims worse than other claims founded in the Bill of Rights. See *ante*, at 6, 8, 11-12, 20. That is not so. The distinctive aspects of litigating a takings claim merely reflect the distinctive aspects of the constitutional right. Once again, a Fourth Amendment claim arises at the moment a police officer uses excessive force, because the Constitution prohibits that thing and that thing only. (Similarly, for the majority's other analogies, a bank robber commits his offense when he robs a bank and a tortfeasor when he acts negligently—because that conduct, and it alone, is what the law forbids.) Or to make the same point a bit differently, even if a government could compensate the victim in advance—as the majority requires here—the victim would still suffer constitutional injury when the force is used. But none of that is true of Takings Clause violations. That kind of infringement, as explained, is complete only after *two* things occur: (1) the government takes property, and (2) it fails to pay just compensation. See *supra*, at 2-3. All *Williamson County* and its precursors do is

recognize that fact, by saying that a constitutional claim (and thus a §1983 suit) arises only after the second condition is met—when the property owner comes away from the government's compensatory procedure empty-handed. That is to treat the Takings Clause exactly as its dual elements require—and because that is so, neither worse nor better than any other right.

Second, the majority contends that its rule follows from the constitutional text, because the Takings Clause does not say "[n]or shall private property
37 be taken for public *37 use, without an available procedure that will result in compensation." *Ante*, at 6. There is a reason the majority devotes only a few sentences to that argument. Because here's another thing the text does not say: "Nor shall private property be taken for public use, without advance or contemporaneous payment of just compensation, notwithstanding ordinary procedures." In other words, the text no more states the majority's rule than it does *Williamson County*'s (and its precursors'). As constitutional text often is, the Takings Clause is spare. It says that a government taking property must pay just compensation—but does not say through exactly what mechanism or at exactly what time. That was left to be worked out, consistent with the Clause's (minimal) text and purpose. And from 1890 until today, this Court worked it out *Williamson County*'s way, rather than the majority's. See *supra*, at 3-4. Under our caselaw, a government could use reliable post-taking compensatory mechanisms (with payment calculated from the taking) without violating the Takings Clause.

Third, the majority tries to explain away that mass of precedent, with a theory so, well, inventive that it appears in neither the petitioner's nor her 15-plus *amici*'s briefs. Don't read the decisions "too broadly," the majority says. *Ante*, at 16. Yes, the Court in each rejected a takings claim, instructing the property owner to avail herself instead of a government-created compensatory mechanism. But all the Court meant (the majority says) was that the plaintiffs had sought the wrong kind of relief: They could not get injunctions because the available compensatory procedures gave an adequate remedy at law. The Court still believed (so says the majority) that the cases involved constitutional violations. Or said otherwise (again, according to the majority), the Court still understood the Takings Clause to prohibit delayed payment.

Points for creativity, but that is just not what the
38 deci- *38 sions say. Most of the cases involved requests for injunctions, but the equity/law distinction played little or no role in our analyses. Instead, the decisions addressed directly what the Takings Clause requires (or not). And as already shown, *supra*, at 3-4, they held that the Clause does not demand advance payment. Beginning again at the beginning, *Cherokee Nation* decided that the Takings Clause "does not provide or require that compensation shall be actually paid in advance." 135 U. S., at 659. In *Backus* v. *Fort Street Union Depot Co.*, 169 U. S. 557, 567-568 (1898), the Court declared that a property owner had no "constitutional right to have the amount of his compensation finally determined and paid before yielding possession." By the time of *Williams* v. *Parker*, 188 U. S., at 502, the Court could state that "it is settled by repeated decisions" that the Constitution allows the taking of property "prior to any payment." Similarly, in *Joslin Mfg. Co.* v. *Providence*, 262 U. S. 668, 677 (1923), the Court noted that "[i]t has long been settled that the taking of property . . . need not be accompanied or preceded by payment, but that the requirement of just compensation is satisfied when" there is a pledge of "reasonably prompt ascertainment and payment." In *Hurley* v. *Kincaid*, 285 U. S. 95, 104 (1932), the Court repeated that the "Fifth Amendment does not entitle [a property owner] to be paid in advance of the taking." I could go on—there are eighty more years to cover, and more decisions in the early years too—but by now you probably get the idea.

Well, just one more especially good demonstration. In *Yearsley* v. *W. A. Ross Constr. Co.*, 309 U. S. 18 (1940), the plaintiffs sought money damages for an alleged Takings Clause violation. For that reason, the Court's theory about suits seeking injunctions has no possible

application. Still, the Court rejected the claim: The different remedy requested made no difference in the result. And yet more important: In refusing to
39 find a Takings Clause *39 violation, the Court used the exact same reasoning as it had in all the cases requesting injunctions. Once again, the Court did not focus on the nature of the relief sought. It simply explained that the government had provided a procedure for obtaining post-taking compensation—and that was enough. "The Fifth Amendment does not entitle him [the owner] to be paid in advance of the taking," held the Court, quoting the last injunction case described above. *Id*., at 21 (quoting *Hurley*, 285 U. S., at 104; brackets in original). Because the government had set up an adequate compensatory mechanism, the taking was "within [the government's] constitutional power." 309 U. S., at 22. Once again, the opposite of what the majority pronounces today.

12 [12] The majority's supposed best case to the contrary, *First English Evangelical Lutheran Church of Glendale* v. *County of Los Angeles*, 482 U. S. 304 (1987), is not so good, as is apparent from its express statement that it accords with *Williamson County*. See 482 U. S., at 320, n. 10. In *First English*, the Court held that a property owner was entitled to compensation for the temporary loss of his property, occurring while a (later-repealed) regulation was in effect. See *id*., at 321. The Court made clear that a government's duty to compensate for a taking—including a temporary taking—arises from the Fifth Amendment, as of course it does. See *id*., at 315. But the Court nowhere suggested that a Fifth Amendment violation happens even before a government denies the required compensation. (You will scan the majority's description of *First English* in vain for a quote to that effect—because no such quote exists. See *ante*, at 9-11.) To the contrary, the Court went out of its way to recognize the *Williamson County* principle that "no constitutional violation occurs until just compensation has been denied." 482 U. S., at 320, n. 10 (internal quotation marks omitted).

Fourth and finally, the majority lays claim to another line of decisions—involving the Tucker Act—but with no greater success. The Tucker Act waives the Federal Government's sovereign immunity and grants the Court of Federal Claims jurisdiction over suits seeking compensation for takings. See 28 U. S. C. §1491(a)(1). According to
40 *40 the majority, this Court's cases establish that such an action "*is* a claim for a violation of the Fifth Amendment"—that is, for a constitutional offense that has already happened because of the absence of advance payment. *Ante*, at 19, n. 7 (emphasis in original); see *ante*, at 13. But again, the precedents say the opposite. The Tucker Act is the Federal Government's equivalent of a State's inverse condemnation procedure, by which a property owner can obtain just compensation. The former, no less than the latter, *forestalls* any constitutional violation by ensuring that an owner gets full and fair payment for a taking. The Court, for example, stated in *United States* v. *Riverside Bayview Homes*, *Inc*., 474 U. S. 121, 128 (1985), that "so long as [post-taking Tucker Act] compensation is available for those whose property is in fact taken, the governmental action is not unconstitutional." Similarly, we held in *Preseault* v. *ICC*, 494 U. S. 1, 4-5 (1990) that when "compensation is available to [property owners] under the Tucker Act[,] the requirements of the Fifth Amendment are satisfied." And again, in *Ruckelshaus* v. *Monsanto Co*., 467 U. S. 986, 1016 (1984) we rejected a takings claim because the plaintiff could "seek just compensation under the Tucker Act" and "[t]he Fifth Amendment does not require that compensation precede the taking." All those decisions (and there are others) rested on the premise, merely reiterated in *Williamson County*, that the "availability of a suit for compensation against the sovereign will defeat a contention that the action is unconstitutional as a violation of the Fifth Amendment." *Larson* v. *Domestic and Foreign Commerce Corp*., 337 U. S. 682, 697, n. 18 (1949).

13 [13] *Jacobs* v. *United States*, 290 U. S. 13 (1933), the Tucker Act case the majority cites to support its argument, says nothing different. The majority twice notes *Jacobs*' statement that a Tucker Act claim "rest[s] upon the Fifth Amendment." *Ante*, at 7-8 (quoting 290 U. S., at 16). And so it does, because the compensatory obligation that the Tucker Act vindicates arises from—or "rests upon"—the Fifth Amendment. But that is a far cry from saying, as the majority does, that the Government has already violated the Fifth Amendment when the Tucker Act claim is brought—before the Government has denied fair compensation.

To the extent it deals with these cases (mostly, it just ignores them), the majority says only that they (like *Williamson County*) were "confused" or wrong. See *ante*, at 13, 19, n. 7. But maybe the majority should take the hint: When a theory requires declaring precedent after precedent after precedent wrong, that's a sign the theory itself may be wrong. The majority's theory is just that.

III

And not only wrong on prior law. The majority's overruling of *Williamson County* will have two damaging consequences. It will inevitably turn even well-meaning government officials into lawbreakers. And it will subvert important principles of judicial federalism.

To begin with, today's decision means that government regulators will often have no way to avoid violating the Constitution. There are a "nearly infinite variety of ways" for regulations to "affect property interests." *Arkansas Game and Fish Comm'n* v. *United States*, 568 U. S. 23, 31 (2012). And under modern takings law, there is "no magic formula" to determine "whether a given government interference with property is a taking." *Ibid*. For that reason, a government actor usually cannot know in advance whether implementing a regulatory program will effect a taking, much less of whose property. Until today, such an official could do his work without fear of wrongdoing, in any jurisdiction that had set up a reliable means for property owners to obtain compensation. Even if some regulatory action turned out to take someone's property, the official would not have violated the Constitution. But no longer. Now, when a government undertakes land-
42 use *42 regulation (and what government doesn't?), the responsible employees will almost inescapably become constitutional malefactors. That is not a fair position in which to place persons carrying out their governmental duties.

Still more important, the majority's ruling channels to federal courts a (potentially massive) set of cases that more properly belongs, at least in the first instance, in state courts—where *Williamson County* put them. The regulation of land use, this Court has stated, is "perhaps the quintessential state activity." *FERC* v. *Mississippi*, 456 U. S. 742, 768, n. 30 (1982). And a claim that a land-use regulation violates the Takings Clause usually turns on state-law issues. In that respect, takings claims have little in common with other constitutional challenges. The question in takings cases is not merely whether a given state action meets federal constitutional standards. Before those standards can come into play, a court must typically decide whether, under state law, the plaintiff has a property interest in the thing regulated. See *Phillips* v. *Washington Legal Foundation*, 524 U. S. 156, 164 (1998); see also Sterk, The Demise of Federal Takings Litigation, 48 Wm. & Mary L. Rev. 251, 288 (2006) ("[I]f background state law did not recognize or create property in the first instance, then a subsequent state action cannot take property"). Often those questions—how does pre-existing state law define the property right?; what interests does that law grant?; and conversely what interests does it deny?—are nuanced and complicated. And not a one of them is familiar to federal courts.

This case highlights the difficulty. The ultimate constitutional question here is: Did Scott Township's cemetery ordinance "go[] too far" (in Justice Holmes's phrase), so as to effect a taking of Rose Mary Knick's property? *Pennsylvania Coal Co*. v. *Mahon*, 260 U. S. 393, 415 (1922). But to answer that question, it is first necessary to

address an issue about background state law. In
43 the Township's view, *43 the ordinance did little more than codify Pennsylvania common law, which (the Township says) has long required property owners to make land containing human remains open to the public. See Brief for Respondents 48; Brief for Cemetery Law Scholars as *Amici Curiae* 6-26. If the Township is right on that state-law question, Knick's constitutional claim will fail: The ordinance, on that account, didn't go far at all. But Knick contends that no common law rule of that kind exists in Pennsylvania. See Reply Brief 22. And if she is right, her takings claim may yet have legs. But is she? Or is the Township? I confess: I don't know. Nor, I would venture, do my colleagues on the federal bench. But under today's decision, it will be the Federal District Court for the Middle District of Pennsylvania that will have to resolve this question of local cemetery law.

And if the majority thinks this case is an outlier, it's dead wrong; indeed, this case will be easier than many. Take *Lucas* v. *South Carolina Coastal Council*, 505 U. S. 1003 (1992). There, this Court held that a South Carolina ban on development of beachfront property worked a taking of the plaintiff's land—unless the State's nuisance law already prohibited such development. See *id*., at 1027-1030. The Court then—quite sensibly—remanded the case to the South Carolina Supreme Court to resolve that question. See *id*., at 1031-1032. (And while spotting the nuisance issue, the Court may have overlooked other state-law constraints on development. In some States, for example, the public trust doctrine or public prescriptive easements limit the development of beachfront land. See Sterk, The Federalist Dimension of Regulatory Takings Jurisprudence, 114 Yale L. J. 203, 227 (2004).) Or consider *Stop the Beach Renourishment, Inc*. v. *Florida Dept. of Environmental Protection*, 560 U. S. 702 (2010). The federal constitutional issue there was whether a decision of the Florida Supreme Court relating
44 to beachfront prop- *44 erty constituted a taking. To resolve that issue, though, the Court first had to address whether, under pre-existing Florida property law, "littoral-property owners had rights to future accretions and contact with the water superior to the State's right to fill in its submerged land." *Id*., at 730. The Court bit the bullet and decided that issue itself, as it sometimes has to (though thankfully with the benefit of a state high court's reasoning). But there is no such necessity here—and no excuse for making complex state-law issues part of the daily diet of federal district courts.

State courts are—or at any rate, are supposed to be—the "ultimate expositors of state law." *Mullaney* v. *Wilbur*, 421 U. S. 684, 691 (1975). The corollary is that federal courts should refrain whenever possible from deciding novel or difficult state-law questions. That stance, as this Court has long understood, respects the "rightful independence of the state governments," "avoid[s] needless friction with state policies," and promotes "harmonious relation[s] between state and federal authority." *Railroad Comm'n of Tex*. v. *Pullman Co*., 312 U. S. 496, 500-501 (1941). For that reason, this Court has promoted practices of certification and abstention to put difficult state-law issues in state judges' hands. See, *e.g*., *Arizonans for Official English* v. *Arizona*, 520 U. S. 43, 77 (1997) (encouraging certification of "novel or unsettled questions of state law" to "hel[p] build a cooperative judicial federalism"); *Louisiana Power & Light Co*. v. *City of Thibodaux*, 360 U. S. 25, 28 (1959) (approving federal-court abstention in an eminent domain proceeding because such cases "turn on legislation with much local variation interpreted in local settings"). We may as well not have bothered. Today's decision sends a flood of complex state-law issues to federal courts. It makes federal courts a principal player in local and state land-use disputes. It betrays judicial federalism.

45 *45 IV

Everything said above aside, *Williamson County* should stay on the books because of *stare decisis*. Adherence to precedent is "a foundation stone of the rule of law." *Michigan* v. *Bay Mills Indian Community*, 572 U. S. 782, 798 (2014). "[I]t

promotes the evenhanded, predictable, and consistent development of legal principles, fosters reliance on judicial decisions, and contributes to the actual and perceived integrity of the judicial process." *Payne* v. *Tennessee*, 501 U. S. 808, 827 (1991). *Stare decisis*, of course, is "not an inexorable command." *Id*., at 828. But it is not enough that five Justices believe a precedent wrong. Reversing course demands a "special justification—over and above the belief that the precedent was wrongly decided." *Kimble* v. *Marvel Entertainment*, *LLC*, 576 U. S. ___, ___ (2015) (slip op., at 8) (internal quotation marks omitted). The majority offers no reason that qualifies.

In its only real stab at a special justification, the majority focuses on what it calls the "*San Remo* preclusion trap." *Ante*, at 2. As the majority notes, this Court held in a post-*Williamson County* decision interpreting the full faith and credit statute, 28 U. S. C. §1738, that a state court's resolution of an inverse condemnation proceeding has preclusive effect in a later federal suit. See *San Remo Hotel*, *L. P.* v. *City and County of San Francisco*, 545 U. S. 323 (2005); *ante*, at 1-2, 5-6, 22. The interaction between *San Remo* and *Williamson County* means that "many takings plaintiffs never have the opportunity to litigate in a federal forum." *Ante*, at 22. According to the majority, that unanticipated result makes *Williamson County* itself "unworkable." *Ibid*.

But in highlighting the preclusion concern, the majority only adds to the case for respecting *stare decisis*—because that issue can always be addressed by Congress. When "correction can be had by legislation," Justice Brandeis once stated, 46 the Court should let stand even "error[s on] *46 matter[s] of serious concern." *Square D Co*. v. *Niagara Frontier Tariff Bureau*, *Inc*., 476 U. S. 409, 424 (1986) (quoting *Burnet* v. *Coronado Oil & Gas Co*., 285 U. S. 393, 406 (1932) (dissenting)). Or otherwise said, *stare decisis* then "carries enhanced force." *Kimble*, 576 U. S., at ___ (slip op., at 8); see *South Dakota* v. *Wayfair*, *Inc*., 585 U. S. ___, ___ (2018) (ROBERTS, C. J., dissenting) (slip op., at 2) (The *stare decisis* "bar is even higher" when Congress "can, if it wishes, override this Court's decisions with contrary legislation"). Here, Congress can reverse the *San Remo* preclusion rule any time it wants, and thus give property owners an opportunity—*after* a state-court proceeding—to litigate in federal court. The *San Remo* decision, as noted above, interpreted the federal full faith and credit statute; Congress need only add a provision to that law to flip the Court's result. In fact, Congress has already considered proposals responding to *San Remo*—though so far to no avail. See Brief for Congressman Steve King et al. as *Amici Curiae* 7. Following this Court's normal rules of practice means leaving the *San Remo* "ball[in] Congress's court," so that branch can decide whether to pick it up. *Kimble*, 576 U. S., at ___ (slip op., at 8).

14 [14] Confronted with that point, the majority shifts ground. It notes that even if Congress eliminated the *San Remo* rule, takings plaintiffs would still have to comply with *Williamson County*'s "unjustified" demand that they bring suit in state court first. See *ante*, at 22. But that argument does not even purport to state a special justification. It merely reiterates the majority's view on the merits. --------

And the majority has no other special justification. It says *Williamson County* did not create "reliance interests." *Ante*, at 23. But even if so, those interests are a *plus-factor* in the doctrine; when they exist, *stare decisis* becomes "superpowered." *Kimble*, 576 U. S., at ___ (slip op., at 10); *Payne*, 501 U. S., at 828 (*Stare decisis* concerns are "at their acme" when "reliance interests are involved"). The absence of reliance is not itself a 47 reason for overruling *47 a decision. Next, the majority says that the "justification for [*Williamson County*'s] state-litigation requirement" has "evolve[d]." *Ante*, at 22. But to start with, it has not. The original rationale—in the majority's words, that the requirement "is an element of a takings claim," *ante*, at 22—has held strong for 35 years (including in the cases the majority cites), and is the same one I rely on today. See, *e.g.*, *Horne*, 569 U. S., at 525-526

(quoting *Williamson County*'s rationale); *Suitum* v. *Tahoe Regional Planning Agency*, 520 U. S. 725, 734 (1997) (same); *supra*, at 2-3. And anyway, "evolution" in the way a decision is described has never been a ground for abandoning *stare decisis*. Here, the majority's only citation is to last Term's decision overruling a 40-year-old precedent. See *ante*, at 22 (citing *Janus* v. *State*, *County*, *and Municipal Employees*, 585 U. S. ___, ___ (2018) (slip op., at 23)). If that is the way the majority means to proceed—relying on one subversion of *stare decisis* to support another—we may as well not have principles about precedents at all.

What is left is simply the majority's view that *Williamson County* was wrong. The majority repurposes all its merits arguments—all its claims that *Williamson County* was "ill founded"—to justify its overruling. *Ante*, at 20-21. But the entire idea of *stare decisis* is that judges do not get to reverse a decision just because they never liked it in the first instance. Once again, they need a reason *other than* the idea "that the precedent was wrongly decided." *Halliburton Co.* v. *Erica P. John Fund, Inc.*, 573 U. S. 258, 266 (2014); see *supra*, at 16. For it is hard to overstate the value, in a country like ours, of stability in the law.

Just last month, when the Court overturned another longstanding precedent, JUSTICE BREYER penned a dissent. See *Franchise Tax Bd. of Cal.* v. *Hyatt*, 587 U. S. ___, ___ (2019). He wrote of the dangers of reversing legal course "only because five Members of a later Court" decide that an earlier ruling was incorrect. *Id.*, at
48 ___ (slip op., at *48 13). He concluded: "Today's decision can only cause one to wonder which cases the Court will overrule next." *Ibid*. Well, that didn't take long. Now one may wonder yet again.

Crystal Acker

From: Rachel Zierdt <rzierdt@gmail.com>
Sent: September 17, 2019 6:30 PM
To: Crystal Acker; darin.barlow@sonoma-county.org
Subject: Sept. 30 hearing

EXTERNAL

Dear County Officials,

I formally wish to voice my objection to the Purvine permit that is being heard by the Board Of Supervisors. Purvine is a small road with difficult access and really is no place to run a cannabis buisness. Additionally just because the neighborhood has the rural aspect does not make it an appropriate place for this type of endeavor. Water is a huge issue, proximity to neighbors and previous bad behavior by this owner make this an unacceptable permitting area.

Regards,
Rachel Zierdt
1936 Coffee Lane
Sebastopol, CA

LAW OFFICES OF
WEILL & MAZER
A PROFESSIONAL CORPORATION
200 California Street
Suite 400
San Francisco, CA 94111

MARC S. MAZER
ATTORNEY AT LAW

Voice (415) 421-0730
Fax (415) 421-2355
mazer@weillmazer.com

September 20, 2019

Sonoma County Board of Supervisors
Sonoma County Permit and Resource Management Department
2550 Venture Avenue
Santa Rosa, CA 95403

(via email only)

RE: Cannabis Permit Application Appeal UPC17-0020
334 Purvine Road, Petaluma, CA (Property)
Our client: Petaluma Hills Farm, LLC (PHF) and Sonoma Hills Farm, LLC (SHF)

Dear Chair and Board Members:

I represent Petaluma Hills Farm, LLC, which is the applicant in the aforementioned Cannabis Permit Application. I also represent Sonoma Hills Farm, LLC, which is the owner of the property on which the applicant intends to operate its cannabis cultivation.

This letter is intended to respond to a the appeal letter to from Kevin Block, who represents a purported "neighborhood" group called "No Pot on Purvine" (NPOP). In his letter, he states that NPOP opposes any cannabis operations on Purvine Road in Petaluma. I am sending this letter to point out several misrepresentations made by Mr. Block in his letter and address them.

Mr. Block's description of proposed cannabis operations by the applicant is a fiction created to scare the public. The permit application sets forth the proposed operations and the applicant intends to implement those operations as proposed and as modified by the Sonoma Board of Zoning Adjustments in the initial permit application hearing earlier this year, not as described in Mr. Block's fantasy which is designed to scare the public and influence this permitting process.

Moreover, it is apparent from recent negotiations with Mr. Block and the tenor of his letter to you opposing the permit, that his clients are merely proceeding with the civil litigation in order to improperly attempt to influence Sonoma County and persuade this Board to overturn the unanimous approval of the permit by the Board of Zoning. The Board of Zoning and its staff spent almost two years analyzing and investigating and considering all aspects of the subject permit application. After a hearing which lasted almost 6 hours, the Sonoma County Board of

RE: Cannabis Permit Application UPC17-0020
334 Purvine Road, Petaluma, CA (Property)
Our client: Petaluma Hills Farm, LLC (PHF) and Sonoma Hills Farm, LLC (SHF)

Zoning unanimously approved the subject application, subject to various conditions and modifications (many of which were proposed by Mr. Block's clients) and which were all accepted by the applicant. Despite the acceptance of all of virtually all of the permit modifications requested by Mr. Block's clients, they are continuing to unreasonably oppose the subject permit application because they simply do not want any cannabis operations in Sonoma County. Since the approved permit complies with the law, Mr. Block's clients' appeal should be denied and the previous unanimous approval of the subject permit should be affirmed.

Mr. Block also attempts to portray a "preliminary injunction" issued by the Court in February as making some findings that should be accepted by this Board. Mr. Block knows better. As the title suggests, the injunction against the applicant is just "preliminary." Mr. Block is familiar with the well-known principle: "The granting or denial of a preliminary injunction does not amount to an adjudication of the ultimate rights in controversy." *Law School Admission Council, Inc. v. State of California* (2014) 222 Cal.App.4th 1265, 1280. Mr. Block knows better than to portray an interim order as some sort of ultimate finding on the merits.

The Court Order submitted as part of Mr. Block's letter does not state that "defendants engaged in illegal activity". There is no court finding or ruling in that regard. Significantly, Mr. Block does not quote any portion of the Court order that makes such a finding, because no such finding is in the Order.

As Mr. Block well knows, a "preliminary injunction" is designed to maintain the status quo of the parties. The "preliminary" injunction did not prohibit the parties from seeking a cannabis cultivation permit from the County of Sonoma and quite properly does not express any opinion, one way or the other, on the merits of the subject permit application. Mr. Block's letter fails to mention that the evidence submitted before the Court established that the only cannabis grown or consumed on the Property was through the efforts of Jared Rivera, a tenant who previously lived and worked on the Property and who has a valid medical cannabis card which allowed him to grow cannabis on the Property and consume it. Mr. Block also failed to inform the Board that Mr. Rivera testified that he personally harvested the cannabis in late September and early October, 2018 (before the lawsuit was filed and certainly before he was ever served with the lawsuit in November, 2018).

Mr. Block makes a great deal of his representation of No Pot on Purvine. But he fails to inform the Board that "No Pot on Purvine" **voluntarily dismissed** its claims in the Court proceeding

RE: Cannabis Permit Application UPC17-0020
334 Purvine Road, Petaluma, CA (Property)
Our client: Petaluma Hills Farm, LLC (PHF) and Sonoma Hills Farm, LLC (SHF)

and is no longer a party to that litigation. The same decision was made by founding member Sanjay Bagai. However, the remaining plaintiffs in that Court proceeding are all founding members of "No Pot on Purvine", including Mr. Bagai's wife Phoebe Lang. The Board would be justified in concluding that No Pot on Purvine and Mr. Bagai (both represented by Mr. Block) were advised that they face significant risks in maintaining the action and that it was prudent for them to dismiss to avoid their ultimate exposure.

Mr. Block failed to mention that at the time of the issuance of the preliminary injunction, his clients failed to present no evidence of any cannabis cultivation on the Property---simply because no such cultivation existed. I have attached a copy of the Declaration of Jared Rivera which was filed with the Court and in which Mr. Rivera states under oath that he alone was responsible for growing any cannabis on the Property and that he alone consumed that cannabis and that it was for medical purposes only.

To be clear, SHF, PHF and the other defendants in that action all deny any wrongdoing and are vigorously defending that lawsuit which is not close to having a trial date scheduled. The Order issuing the "preliminary" injunction is currently on appeal with the Court of Appeals. The issues are not resolved as implied by Mr. Block.

Mr. Block appears to object to the Code enforcement process of the County of Sonoma and appears to complain that the County of Sonoma lacks competence to enforce its own laws and regulations. My clients and I disagree. The applicant has been completely transparent with the County of Sonoma and has allowed and invited access to the Property for that purpose. Even those who are members of NPOP have been invited onto the Property, but refused to accept that invitation.

Mr. Block's comments about Mike Harden, a member of applicant PHF, is nothing short of slander. Mr. Harden has never been accused or nor convicted of any criminal activity. Mr. Harden was administratively sanctioned by the SEC because a person under his supervision violated the law. Mr. Block conveniently fails to point out that the violations of Mr. Harden were administrative violations, rather than criminal violations, which took place over ten years ago and then settled with the SEC in 2016. Mr. Block knows full well that such misrepresentations would never be countenanced in a court of law. This Board should reject Mr. Block's distortions and innuendoes. The Court quite properly has not in any way attempted to

RE: Cannabis Permit Application UPC17-0020
334 Purvine Road, Petaluma, CA (Property)
Our client: Petaluma Hills Farm, LLC (PHF) and Sonoma Hills Farm, LLC (SHF)

interfere with this Board's independent evaluation of the permit and has expressed no view on the merits of the application; any insinuation by Mr. Block to the contrary is false.

Purvine Road consists of a county road of approximately 2 miles in length and surrounded by agricultural tracks of land. There are only 3-4 residences on Purvine Road. The subject property consists of approximately 34 acres, and only one of which will be utilized by the proposed cannabis operation. The application is not inconsistent with the agricultural nature of the area and certainly whatever cannabis odor is generated is eclipsed by the significant odor of cow manure from the adjacent properties.

Respectfully, we urge that this appeal be denied and that the Board of Zoning's approval of the subject application be affirmed and finalized granted without further delay.

Very truly yours,

WEILL & MAZER,
A Professional Corporation

By: _____
MARC S. MAZER

Attachment (Decl. of Jared Rivera)

MARC S. MAZER (SBN 81163)
mazer@weillmazer.com
WEILL & MAZER
A Professional Corporation
200 California Street, Suite 400
San Francisco, CA 94111
Telephone: (415) 421-0730

Attorneys for Defendants

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SONOMA

No Pot on Purvine, an unincorporated association; Sanjay Bagai; Phoebe Lang, Autymn Garvisch; Ayn Garvisch, and Britt Christiansen,

Plaintiffs,

vs.

Petaluma Hills Farm, LLC, a California limited liability company, et al,

Defendants.

CASE NO. SCV263292

DECLARATION OF JARED RIVERA IN SUPPORT OF DEFENDANTS' SPECIAL MOTION TO STRIKE THE COMPLAINT OR IN THE ALTERNATIVE, TO STRIKE ALLEGATIONS OF ILLEGAL CANNABIS CULTIVATION FROM THE COMPLAINT

[Code of Civil Procedure '425.16]

Date: MAR 01 2019
Time: 9:00 a.m.
Dept: Courtroom 16

Hon. Patrick Broderick
Complaint Filed: October 9, 2018

BY FAX

I, JARED RIVERA, declare as follows:

MARC S. MAZER (SBN 81163)
mazer@weillmazer.com
WEILL & MAZER
A Professional Corporation
200 California Street, Suite 400
San Francisco, CA 94111
Telephone: (415) 421-0730

Attorneys for Defendants

SUPERIOR COURT OF CALIFORNIA

COUNTY OF SONOMA

No Pot on Purvine, an unincorporated association; Sanjay Bagai; Phoebe Lang, Autymn Garvisch; Ayn Garvisch, and Britt Christiansen,

Plaintiffs,

vs.

Petaluma Hills Farm, LLC, a California limited liability company, et al,

Defendants.

CASE NO. SCV263292

DECLARATION OF JARED RIVERA IN SUPPORT OF DEFENDANTS' SPECIAL MOTION TO STRIKE THE COMPLAINT OR IN THE ALTERNATIVE, TO STRIKE ALLEGATIONS OF ILLEGAL CANNABIS CULTIVATION FROM THE COMPLAINT

[Code of Civil Procedure '425.16]

Date:
Time: 9:00 a.m.
Dept: Courtroom 16

Hon. Patrick Broderick
Complaint Filed: October 9, 2018

I, JARED RIVERA, declare as follows:

I make this declaration based upon my own personal knowledge and would and could competently testify to these facts if necessary.

Pursuant to a written lease agreement with Sonoma Hills Farm LLC, I live at 334 Purvine Road in Petaluma, California (hereinafter "Property") which consists of approximately 37 acres of property and structures on the Property. The Property is owned by Sonoma Hills Farm, LLC. My wife and two children (Jennifer, Zella (2 1/2 years old), and Sage (1 year old)) live on the Property with me and we have been residing at that Property since January, 2018. Petaluma Hills Farm LLC is another tenant of the Property. I am neither an employee or agent of either Petaluma Hills Farm, LLC, Sonoma Hills Farm, LLC, or any of the other individual Plaintiffs in this action. I am not a member of either Petaluma Hills Farm, LLC or Sonoma Hills Farm, LLC and do not have any ownership interest in the Property.

The lease I have with Sonoma Hills Farm, LLC allows me to live in a 2000 square foot (approximate) home located on the Property and also allows me to farm on the Property. My home has always been in California and I have lived in Petaluma for the last 2 years. When I leased the Property in January, 2018, I had an issued Medical Cannabis ID Card and continue to have this card. I understand by having this Medical Cannabis ID Card, that I am entitled to grow my own cannabis for my own personal medical use. I understand that the limitations for such cultivation is that I am limited to growing no more than 100 square feet of total canopy of cannabis plants. In reliance upon that understanding and while I have been living on this Property, I cultivated 25-30 cannabis plants, of which some were destroyed due to mold or gophers. No other cannabis was grown on the Property and no other person cultivated cannabis on the Property while I have been living on the Property. Certainly neither Petaluma Hills Farm, LLC, Sonoma Hills Farm, LLC, Mike Harden, Sam Magruder, nor Gian Paolo Veronese were involved in or participated with me in the cultivation of this medical cannabis on this Property. As the plants matured, they each created stalks which made them look very large and one could easily mistake one plant for multiple plants. However, only 25-30 medical cannabis plants were actually grown on this Property.

In late September and very early October, 2018, I harvested all of my medical cannabis plants. Some have been trimmed and placed into containers, and the rest have been drying in a

structure on the Property. A few of the cannabis plants I planted on the Property, were damaged by mold and gophers, and a couple of those damaged and unusable plants were hung by me upside down in the barn on the Property as a mere ornament. The rest of the medical cannabis plants were stored in a locked structure on the Property. Regardless, all of the cannabis and cannabis plants on the Property belong to me and totally controlled and used only by me pursuant to my rights as a holder of a Medical Cannabis Card.

In addition to the medical cannabis, I also had an extensive vegetable garden which I shared with local chefs and even with neighbors (including some of the Plaintiffs in this action). I grew almost 10,000 pounds of potatoes, more than 600 tomato plants, more than 3000 pounds of squash, almost 1000 pounds zucchini, a ½ acre of peppers, ¼ acre of gooseberries, and many herbs, as well as other vegetables.

With respect to the potatoes and in order to harvest them all timely and before they could rot in the ground, in August, 2018 I organized an event on the Property to invite people to help with the harvest for sale called the "Potato Palooza". I invited all of the neighbors, including the Plaintiffs, local chefs from Petaluma and the immediate area, my friends, and others. Approximately, 100-150 people showed up for the event during the course of the day, although at any one time only about 20-30 people were on the Property. All people who showed up at the Property for this event were supposed to sign a release document agreeing that they came onto the Property at their own risk in order to limit liability. This release was provided by Sonoma Hills Farm, LLC which owned the Property and leased it to me and Petaluma Hills Farm, LLC. I did not charge anyone for attending the event. However, I sold vegetables to some of them. I did not sell any of my cannabis and never sold or distributed any of my cannabis grown on the Property and know that it would be unlawful to do so. Plaintiffs contentions that such event required a permit are false. Plaintiffs contentions that such event involved the use of cannabis is also false.

I have reviewed the Declaration of Sonia Ariaga, who filed her declaration in support of the Plaintiffs application for restraining order (which was granted and then apparently dissolved voluntarily by the Plaintiffs). In her declaration, she claims to have attended the Potato Palooza at the Property. I don't recall meeting anyone by that name but I don't dispute her contention

that she attended. In her declaration, she apparently claims that a person by the name of "Jared" spoke with her and was on the property at the time. Ms. Ariaga falsely claims to have seen over 100 cannabis plants in a plastic enclosed structure. I set up that structure for the purpose of planting seedlings for vegetables and a very few medical cannabis plants. At most, there were 15-20 cannabis plants in that structure and the rest of the plants were all vegetables.

Ms. Ariaga claims that I told her that the property was a "cannabis growing facility". I unequivocally deny telling Ms. Ariaga or anyone else that the Property was being used as a "cannabis growing facility". I have, however, told people that Sonoma Hills Farm intends for the Property to become a commercial cannabis growing facility since there is a pending application for a permit to allow for commercial cannabis cultivation on the property. The cannabis in the plastic enclosed structure and the cannabis plants on the property were my plants and used only for my personal medical use.

During this event, I did not observe any of the invited guests smoking or otherwise consuming cannabis. Certainly, none of my medical cannabis was ever made available to any guests since it was only for my own personal medicinal use.

While I have been living on the Property, Mike Harden (one of the members of the owner of the Property) held a birthday party consisting of about 30 guests. The party took place in the barn area in June, 2018. A bus brought in some of the people from San Francisco since they lived there. I personally attended the party.

Since January, 2018 I believe that there were only two other events held on the Property. One of them was a "lamb roast" attended by about 40 people, an afternoon barbeque. Another was an event I organized which was held for about 20 local chefs for a "seed popping party" to start growing herbs and vegetables for the various restaurants at which these chefs work. I attended both of these events and I did not observe anyone consuming any cannabis.

None of the events described above involved the use of cannabis. None of the food prepared at these events involved cannabis products. I was personally involved in the preparation of food at these events. I am not aware of the County requiring any permits for these events since there was no sound amplification and nobody was charged by either me or the owner of the Property to attend.

In addition, there was a fundraiser held to promote cannabis legislation. I did not organize this event. However, I unequivocally state that none of the medical cannabis I grew on the Property was in any manner used during that event or any of the events held on the Property while I lived there since January, 2018.

There was also an event involving local Chefs Cycle event for "No Kid Hungry" and another event inviting neighbors to come onto the property to meet the owners.

Other than the 7 events described above, no other events have been held on the Property. The last event held on the Property was the Potato Palooza held in August, 2018.

I personally had discussions with Sanjay Bagai and his wife, Phoebe Lang. Before this lawsuit was ever filed, I had informed them both that I was growing medical cannabis on the Property for my own use. Sanjay was very erratic and contentious about these issues and demanded that no cannabis should ever be grown on the Property. At one point, Sanjay started yelling at me and even threatened to kill me. He also threatened to call child services to try to take my children away from me. I have heard recordings of Sanjay's voice mails to others in which he threatened them and yelled at them. Although he had since dismissed his claims, his wife Phoebe Lang apparently continues with this lawsuit in his stead. Phoebe Lang was witness to Sanjay yelling at me and threatening my life. This has all been very traumatic to me and my family.

I declare under penalty of perjury that the foregoing is true and correct this 13th day of December, 2018 at Petaluma, California.

Jared Rivera 12/13/18

JARED RIVERA

Crystal Acker

Sent:
To:

Cc:

Subject:

RE: File # UPC!7-0020

To whom it may concern:

I live off of Middle Two Rock Road on Wilson Lane, I have lived here for over 30 years. We are a community of agricultural endeavors, horse, cattle, chicken, ducks and vegetable farms. In the last 3 years we have had multiple break ins, robberies and home invasions (2 blocks from my ranch) due to people looking for marijuana grows. I do not believe that a marijuana operation is compatible with our family and country values in Middle Two Rock. The grow on Purvine Road has already proven to be a bad neighbor by not being permitted for busing in customers, selling marijuana infused food, giving cooking classes with marijuana, and overnight lodging, and general tours, this all was publically advertised on their website. I do not believe any of these things are legal under any permitted marijuana grow, but this grow seems to think they are above the law and can do as they pleased even before they got their permit, so what will they do with a permit?
It is a sad time when your neighbor have to erect huge wooden fences, guard towers, and have lights on 24hours a day to keep out intruders.
I am not against marijuana grows just not in our rural area where are homes are being invaded by people who are not interested in being a part of the community.
Move these grows into industrial areas where they belong!

Cindy Roberts
64 Wilson Lane
Petaluma, CA 94952

Crystal Acker

Sent:
To:

Cc:

Subject:

Dear County Supervisors,

Here are additional comments on odor issues from outdoor cannabis cultivation, to aid in you preparation for the Sept 30 appeal hearing for the CUP application at 334 Purvine.

Permit Sonoma has suggested that fog-based systems may offer mitigation to odor from outside cannabis cultivation. Although these systems have been used for indoor cultivation, they have never been tested or used for outdoor cultivation. I spoke at length with an engineer from Omi Industries, who manufactures the Ecosorb vapor system for cannabis odor control for indoor facilities, who confirmed it has not been tried for outdoor cultivation. From a scientific and public health perspective, such use would raise many safety and efficacy questions requiring extensive testing. The aerosol is composed of undisclosed plant oils and surfactants, forming micron size particles that capture the cannabis terpenes. The safety of inhalation of these vapors has not been tested. Just because something has been safe for oral ingestion does not make if safe for inhalation, as has been recently shown with severe lung damage caused by vaping of cannabis products containing added flavors, compounds safe for oral ingestion. As a scientist, I have major concerns on safety of neighbors and workers inhaling these aerosols, as well as of end users inhaling them from residue on the cannabis plants. Furthermore, our lungs need internal surfactants composed of phospholipids and proteins in order to function; adding an untested synthetic surfactant sounds very dangerous.

As discussed in my prior emails, there is no known method to mitigate odor from an outdoor cannabis field other than separation distance. Vegetation does not disperse cannabis terpenes as it does for poultry and livestock odors. This has been confirmed scientifically (Ortech) as well as in real-life experience here in Sonoma County. The publications that Permit Sonoma has provided on odor analysis are largely irrelevant to cannabis odors, as they relate to odors from livestock, which are very different molecules as well as particulates. However, one of the publications, by Schauberger and Pringer (2012; Chemical Engineering Transactions, vol 30, p13-18), did utilize scientific methods to conclude that distances of 400 meters (1312 ft) were needed to remove nuisance from environmental noxious odors.

Please do not approve this application, or any outdoor cannabis cultivation that is less than 1000 ft from a neighboring property line.

Thank you for your thoughtful analysis of this matter.

Sincerely,

Deborah Eppstein, PhD
801-556-5004