

SUPREME COURT OF LOUISIANA

No. 2024-C-0055

WATSON MEMORIAL SPIRITUAL TEMPLE OF CHRIST D/B/A/ WATSON MEMORIAL TEACHING
MINISTRIES, CHARLOTTE BRANCAFORTE, ELIO BRANCAFORTE, BENITO BRANCAFORTE, JOSEPHINE
BROWN, ROBERT PARKE, NANCY ELLIS, MARK HAMRICK, ROBERT LINK, CHARLOTTE LINK, ROSS
MCDIARMID, LAUREL MCDIARMID, JERRY OSBORNE, JACK STOLIER, AND WILLIAM TAYLOR

Plaintiffs-Respondents

versus

GHASSAN KORBAN, IN HIS CAPACITY AS
EXECUTIVE DIRECTOR OF THE SEWERAGE AND WATER BOARD OF NEW ORLEANS

Defendant-Applicant

CIVIL PROCEEDING

On writ of certiorari to the Fourth Circuit Court of Appeal,
Docket No. 2023-CA-0293
The Honorable Daniel L. Dysart, Joy Cossich Lobrano, and
Karen K. Herman, presiding

On appeal from the Civil District Court, Parish of Orleans
No. 2022-10955, "F-14"
Honorable Jennifer M. Medley, presiding

**PLAINTIFFS-RESPONDENTS' BRIEF IN
OPPOSITION TO APPLICATION FOR REHEARING**

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SUMMARY OF ARGUMENT

Plaintiffs-Respondents, Watson Memorial Spiritual Temple of Christ, *et al.* (hereafter, “Respondents”), submit this brief in opposition to the application for rehearing and memorandum in support filed by Applicant-Defendant Ghassan Korban (hereafter, “Applicant”). Applicant’s request for a rehearing after two (2) unanimous decisions against Applicant by the Fourth Circuit and this Court defies credulity. This Court’s June 28, 2024 ruling properly applied federal *res judicata* law in holding that Respondents’ state-law mandamus claim to enforce their just compensation award against the Sewerage and Water Board of New Orleans (“SWBNO”) is not precluded by their prior federal action. Specifically, this Court’s decision rested on the well-established principle that federal *res judicata* does not bar a subsequent state-law action if the latter could not or should not have been asserted in the federal action. The authorities cited by Applicant, including unreported federal district court cases, do not alter this Court’s apt analysis under the U.S. Fifth Circuit’s decision in *In re Paige*, 610 F.3d 865 (5th Cir. 2010) or this Court’s prior decision in *Reeder v. Succession of Palmer*, 623 So.2d 1268 (La. 1993).

Additionally, Applicant’s request for a rehearing of a unanimous 7-0 decision points to no new law or jurisprudence that compels a rehearing on the merits. In holding that mandamus will lie to compel satisfaction of a just compensation award for inverse condemnation, this Court properly recognized that the Louisiana Constitution’s mandate of “*just compensation paid*” imposes a ministerial duty subject to mandamus that no statute can abrogate. For these reasons, and those more fully explained below and in prior briefing to this Court, Applicant’s request for a rehearing is without basis and should be denied.

ARGUMENT AND LAW

I. This Court properly rejected *res judicata* relying on more recent federal jurisprudence than the unpublished federal cases cited by Applicant.

Applicant’s arguments in favor of rehearing are merely a rehashed version of the same failing arguments that this Court found had “no merit” when previously asserted.¹ Applicant’s Brief in Support of Application for Rehearing (“Brief”) fails to set forth any new controlling statute or jurisprudence that warrants a rehearing in this matter. Each contention asserted in Applicant’s Brief has previously been refuted by Respondents throughout this litigation and explicitly rejected

¹ *Watson Mem’l Spiritual Temple of Christ v. Korban*, 2024-00055, p. *5 (La. 6/28/24), --- So. 3d ---. (“*Watson*”).

by this Court. Respondents incorporate herein all arguments made in prior submissions against the application of *res judicata* to bar their claims in the instant litigation.

A. *Reeder* remains the applicable standard for whether federal *res judicata* bars a state law claim in Louisiana, and the U.S Fifth Circuit’s decision in *In re Paige* forecloses Applicant’s contention that subsequent federal authority justifies application of *res judicata*.

The Supreme Court properly applied *Reeder* in holding that *res judicata* does not apply to bar the instant mandamus suit.² Suggesting otherwise, Applicant points to an unpublished opinion from the Eastern District in *Conwill v. Greenberg Traurig, LLP*.³ However, the analysis applied by the Eastern District in *Conwill* is inapt here. While Applicant suggests *Conwill* somehow negated the holding in *Reeder*, and thus this Court’s reasoning in this case, the *Conwill* court in fact rejected a much broader exception than the one employed by this Court in the instant matter.

The plaintiff in *Conwill* sought a much more expansive reading of the exception this Court noted in *Reeder*—the plaintiff suggested that *any* claim for which the federal court declines supplemental jurisdiction would be free from the bar of *res judicata*. Rejecting this theory, the *Conwill* court found that a dismissal of a plaintiff’s claim brought under the federal Racketeer Influenced and Corrupt Organization Act (“RICO”) barred a later claim under Louisiana’s own RICO Act, which had not been asserted in the first case, as well as punitive damages relevant thereto. In contrast to the mirrored claims rejected in *Conwill*, Respondents in this matter filed a disparate claim in federal court based on a novel theory of a second taking that caused additional injury to Respondents arising out of conduct which occurred after the final judgment rendered in *Lowenburg*.⁴ Federal courts rejected this theory of a second taking, but noted that it was “the only one at issue in their case.”⁵ Thus, *Conwill* is inapposite and has no bearing on the exception to *res judicata* recognized by this Court in *Reeder*.

Jurisprudence from the U.S. Fifth Circuit directly contradicts Applicant’s suggestion that this Court’s decision in *Reeder* has been obviated by later federal court decisions. In fact, in decisions that this Court directly cited in its June 28, 2024 decision, the U.S. Fifth Circuit has recognized the same exception employed by this Court in holding that Respondents’ claims were not barred by *res judicata*.⁶ As the Fifth Circuit explained, “[the] inquiry does not end with the

² *Watson* at *6-8 (applying *Reeder*, 623 So.2d 1268).

³ *Conwill v. Greenberg Traurig, LLP*, No. 11-0938, 2012 U.S. Dist. LEXIS 140197 (E.D. La. Sept. 28, 2012).

⁴ See *Ariyan, Inc. v. Sewerage & Water Bd. of New Orleans*, 543 F.Supp.3d 373, 380-81 (E.D. La. 2021), *aff’d*, 29 F.4th 226. (5th Cir.2022); *Lowenburg v. Sewerage & Water Bd. of New Orleans*, 2015-11971, 2019 WL 3540191 (La. Civ. D. Ct. 3/21/2019) (hereafter, “*Lowenburg*”).

⁵ *Ariyan, Inc. v. SWBNO*, 29 F.4th 226, 229 (5th Cir. 2022).

⁶ See *Watson* at *6.

four-prong test. As a last step, we must determine whether the previously unlitigated claims ‘could or should have been asserted in the prior proceeding.’”⁷ Notably, while Applicant contends that unreported federal district court decisions rendered after *Reeder* call its holding into question, the U.S. Fifth Circuit’s more recent decision in *In re Paige* explicitly holds that the “could or should have been asserted” standard applies *after* a determination of whether the elements of *res judicata* have been satisfied.⁸ While it is true that a judgment explicitly reserving claims forecloses application of *res judicata*, such a reservation is unnecessary if the previously unasserted claims could not and should not have been asserted in the prior proceeding.

Applicant suggests that this Court made a subjective “guess” of the federal court’s intention.⁹ That characterization flies in the face of the detailed and explicit language that this Court noted from the federal court’s opinion, that “dismissing this action *in favor of further state-court proceedings*—with state-court judges, state-court judgments, state-resident plaintiffs, and a state-agency defendant—is the best use of this Court’s ‘unique and substantial discretion.’”¹⁰ Applicant also points to a line from Judge Feldman’s decision in the district court: “a plaintiff who chooses to bring suit in state court cannot later come to federal court to relitigate the issues the state court already decided.”¹¹ That statement, rather than buttressing Applicant’s case, all but proves Respondents’ case. Judge Feldman recognized the preclusive effect of Respondents’ state judgment from *Lowenburg* on any further proceeding, making him unable to disturb that judgment, which stands to this day.¹²

Instead of simply recycling a failed case, as in the cases analyzed in *Conwill*, Respondents brought a claim under a novel theory in federal court under the U.S. Constitution’s Takings Clause asserting a second taking, a new claim that involved a substantially different theory of law and factual basis. Respondents’ present mandamus case is unrelated to the federal claim and is, in fact, directly connected to Respondents’ original case. It seeks to enforce a valid state court judgment in state court; and, as Judge Feldman instructed at the district court, “[s]tate courts can enforce their own judgments.”¹³ There is no federal case law that even suggests that a valid judgment from

⁷ *In re Paige*, 610 F.3d 873 (quoting *In re Intellogic Trace, Inc.*, 200 F.3d 382, 388 (5th Cir. 2000)); see also *D-1 Enterprises, Inc. v. Com. State Bank*, 864 F.2d 36, 38 (5th Cir. 1989) (“Essential to the application of the doctrine of *res judicata* is the principle that the previously unlitigated claim could or should have been brought in the earlier litigation.”).

⁸ *In re Paige*, 610 F.3d at 873.

⁹ Applicant’s Brief at 2.

¹⁰ *Ariyan*, 543 F.Supp.3d at 380-381 (emphasis added). Hereafter, unless noted otherwise, all internal citations and quotation marks omitted, and emphasis herein added.

¹¹ *Id.* at 379.

¹² See *Lowenburg*, 2019 WL 3540191.

¹³ *Ariyan*, 543 F.Supp.3d at 381.

a state court, which itself has preclusive effect over any subsequent litigation, could somehow be obviated by a federal court judgment.

Finally, Applicant cannot point to any law or jurisprudence that would suggest that the Louisiana Supreme Court lacks the authority to hear an issue arising from a *res novus* issue of law of great import to the people and the State of Louisiana, involving the interplay of constitutional provisions and important public policy considerations. This issue, whether mandamus may lie to enforce a state court judgment of inverse condemnation against a state political subdivision, presents just the sort of “exceptional circumstances” that have long been regarded as properly the domain of the state judiciary, which is “the only tribunal empowered to speak definitively” in this regard.¹⁴

II. This Court properly found that the duty to pay just compensation is ministerial for inverse condemnation because the Constitution mandates it, and no statute can abrogate that authority.

It is a fundamental mandate of Louisiana’s Constitution that “Property *shall* not be taken *or damaged* by the state or its political subdivision *except* for public purposes *and* with just compensation *paid* to the owner....” LA. CONST. art. I, § 4(B) (emphasis added). Applicant falsely contends that this Court’s decision stands for several false propositions in an effort emblematic of the “conscious indifference” cited in the concurring opinion by Justice Weimer. Nothing in Applicant’s Brief warrants this Court’s reversal of its unanimous, well-reasoned decision, and Applicant’s new arguments are as easily dispensed as the recycled arguments that this Court has already explicitly rejected.

First, Applicant falsely contends that this Court’s decision effectively reasoned that “having a cause of action against a political subdivision [] take[s] one’s judgment outside the ambit of Article XII, § 10(C),” such that, consequently, “all judgments [against political subdivisions] would be enforceable.”¹⁵ This Court’s decision is devoid of any such reasoning or broad application. Rather, this Court properly reasoned that the Constitution mandates that political subdivisions “shall ... pay” just compensation awarded for inverse condemnation. This Court’s narrow ruling is limited to inverse condemnation actions, recognizing that inverse condemnations and expropriations both arise from a “taking.”¹⁶ Indeed, this Court “reiterat[ed] that”:

[T]he presence of a constitutional mandate relative to takings is wholly distinguishable from cases where the judgment sought to be enforced

¹⁴ *Louisiana Power & Light Co. v. City of Thibodaux*, 360 U.S. 25; 79 S.Ct. 1070, 1073; 3 L.Ed.2d 1058 (1959); *see also* 28 U.S.C. § 1376(c)(4).

¹⁵ Applicant’s Brief at 4.

¹⁶ *Watson* at *11.

through mandamus arises from tort or contract.¹⁷

Thus, Applicant's assertion that this Court's decision will render *all* judgments against political subdivisions subject to mandamus is without merit.

Second, Applicant misconstrues this Court's prior decisions—including its recent decisions in the matter *sub judice* and *Mellor v. Par. Jefferson*¹⁸—by asserting “this Court has repeatedly held that there must be a statute or constitutional provision mandating *when* payment must be made or funds allocated.”¹⁹ However, Applicant cites no authority by *any* court, much less this Court, where the merits *vel non* of granting a writ of mandamus turned on the temporal requirements of the duty at issue. Rather, Louisiana courts have *always* found that mandamus is appropriate if the duty to be compelled is ministerial, i.e., a mandatory duty imposed by law leaving no element of discretion to *whether* to perform the duty at issue. Thus, while the duties at issue in prior cases may have been ministerial because the political subdivision did not perform it within the times required by law, none of those cases remotely suggest that a mandatory duty without temporal limits somehow becomes discretionary. Applicant stretches the reasoning of this Court's prior decisions beyond credulity by claiming that “*when*” the duty must be performed has been the linchpin on which mandamus turns. It has not. However, even under this flawed reasoning, Applicant's argument fails, because the lack of a temporal requirement simply means that the duty is *immediately* enforceable upon a final judgment.

Third, Applicant falsely contends that this Court's decision in *Jazz Casino Co., L.L.C. v. Bridges*²⁰ permitted mandamus because, “[t]he statutes that governed the tax overpayment judgments ‘*expressly* require[d] an appropriation of funds by the legislature.’”²¹ That is false. The statute cited by Applicant, La. R.S. § 47:1494(A), was not even at issue in *Jazz Casino*. Instead, that statute was “the *first*” of “*three* remedies” for recovering unlawful taxes, and it was the “[o]nly” one of those remedies “*expressly* requir[ing] an appropriation of funds by the legislature.”²² In contrast, “the third remedy related to overpayment of refunds, as occurred in [Jazz Casino],” did *not* expressly require an appropriation of funds.

¹⁷ *Id.*

¹⁸ 2022-01713 (La. 09/08/23), 370 So. 3d 388.

¹⁹ Applicant's Brief at 5 (emphasis in original).

²⁰ 2016-1663 (La. 05/03/17), 223 So. 3d 488.

²¹ Applicant's Brief at 5 (emphasis added by Applicant).

²² *Jazz Casino*, 223 So. 3d at 493.

Applicant misleadingly contends that this Court’s decision “primarily relied on its decision in *Jazz Casino*,”²³ when, in fact, this Court’s decision more heavily relied on its more recent decision in *Lowther v. Town of Bastrop*.²⁴ Although *Lowther* was referenced in this Court’s decision in this case more than *Jazz Casino*, Applicant declines to mention *Lowther* once in his Brief. Tellingly, this glaring omission was necessary to support Applicant’s erroneous claim that “*when*” money must be paid has always been operative in determining whether mandamus may lie, because no such law *existed* in *Lowther*. Stated otherwise, **this Court authorized mandamus in *Lowther* without any “statute[] expressly [requiring an appropriation or] providing how and when funds must be appropriated,”** contrary to Applicant’s assertion that this Court “has repeatedly held” such a statute necessary for mandamus to lie.²⁵ Specifically, *Lowther* relied on LA. CONST. art. VI, § 14(A)(2)(e), La. R.S. § 33:1969, and La. R.S. § 33:1992, *none* of which mandated any appropriation of funds for a judgment *or* provided “*when*” a judgment must be paid. Instead, these provisions merely provided “a statutorily mandated and constitutionally protected right to payment,” such that “the combination of these laws served as either a *de facto* appropriation or make the appropriation ... a ministerial function.”²⁶

Applicant’s contention that “[b]y this Court’s reasoning in this case, tort judgments against political subdivisions would be equally enforceable via mandamus” is also without merit.²⁷ Applicant erroneously equates LA. CONST. art. I, § 4(B), which imposes a mandatory duty applicable *only* to the state and its political subdivisions for monies “*paid*,” with La. Civ. Code art. 2315, which imposes a general obligation on *all* juridical and natural persons to “repair” damage caused to another. Because Article 2315 does not impose a duty *specifically* on the state or its political subdivisions, none of the consequences asserted by Applicant will come to pass. This Court’s decision explicitly recognized this and prohibited such a consequence from arising as a result of its decision. The Court expressly qualified that “the presence of a constitutional mandate relative to takings is wholly distinguishable from cases where the judgment sought to be enforced through mandamus arises from tort or contract,”²⁸ thereby precluding any reliance on this decision to enforce payment of judgments arising under tort or contract against the state.

²³ Applicant’s Brief at 5.

²⁴ 2020-01231 (La. 5/13/21), 320 So. 3d 369.

²⁵ See generally *Lowther*, 320 So. 3d 369.

²⁶ *Lowther*, 320 So. 3d at 372.

²⁷ Applicant’s Brief at 6.

²⁸ *Watson* at *11.

Finally, Applicant incorrectly asserts that expropriation judgments, as opposed to other takings judgments, are only enforceable by mandamus because specific statutes require allocation of funds for their payment. Applicant omits, however, that the *only* case cited in this matter directly addressing mandamus in an expropriation case, *Parish of St. Charles v. R.H. Creager, Inc.*,²⁹ “held [that mandamus would lie] *despite* its finding that the expropriation statutes were not directly applicable.”³⁰ Applicant’s contention that statutes requiring payment of judgments in *expropriation* cases “would be superfluous if Article I, § 4(B)(1) already compelled the payment of all expropriation judgments” relies on a false equivalency between statutory and constitutional law, and stands for the draconian proposition that the legislature can statutorily override mandatory constitutional provisions.³¹

This Court has *always* recognized that mandamus is proper where the duty “imposed by *law*”³² is ministerial. The Louisiana Constitution is not only “law,” it is “the *supreme law* of this state to which all legislative instruments must yield.”³³ Thus, in *Mellor*, this Court explained that “only a specific constitutional *or* statutorily provided exception” can supply the antecedent duty for mandamus to lie.³⁴ Accordingly, this Court found that LA. CONST. art. I, §4(B)(1) provides the precise authority for a mandamus action against a political subdivision based on a judgment for inverse condemnation.³⁵ If the legislature were vested with authority to override the Constitution’s mandate of “just compensation *paid*,”³⁶ it would necessarily follow that the legislature can override *any* constitutionally guaranteed right, thereby eviscerating the very reason why inalienable rights are enshrined in the Constitution rather than statute. With respect to the co-equal legislative branch of government, the legislature’s approval is not necessary in the matter *sub judice* because a higher authority—the Louisiana Constitution, ratified by the legislature and the people—already imposes the duty at issue. This Court’s decision must stand.

III. Conscious indifference is not a requirement; yet Applicant’s Brief demonstrates his conscious indifference to his constitutionally mandated duty.

In a concurring opinion, Justice Weimer opined that “mandamus should be coupled with

²⁹ 10-180 (La. App. 5 Cir. 12/14/10), 55 So. 3d 884.

³⁰ *Watson* at *11, n.9.

³¹ Applicant’s Brief at 6.

³² *Lowther*, 320 So. 3d at 371; *Jazz Casino*, 492 So. 3d at 492.

³³ *Louisiana Fed’n of Tchrs. v. State*, 2013-0120 (La. 5/7/13), 118 So. 3d 1033, 1048.

³⁴ 370 So. 3d at 396 (citing *Crooks v. State through Dep’t of Nat. Res.*, 2022-0625 (La. 1/27/23), 359 So. 3d 448, *reh’g denied*, 2022-0625 (La. 3/16/23), 362 So. 3d 424, 452)). *See also Broome v. Rials*, 2023-01108 (La. 4/26/24), 383 So. 3d 578, 585 (“The use of the disjunctive “or” presents two mutually exclusive alternatives. Anyone meeting either of those separate and distinct provisions can bring the action.”).

³⁵ *Watson* at *11.

³⁶ LA. CONST. art. I, § 4(B).

proof of conscious indifference to pay the judgment,” finding that **Respondents “convincingly demonstrate[d] a conscious indifference to payment” by SWBNO.**³⁷ However, Justice Weimer explicitly qualified that “the term has not been used in the context of a constitutional violation.”³⁸ Thus, this Court’s 7-0 decision did not adopt a conscious indifference standard, nor did it remand to the district court for any such determination.

However, even if such a standard applied, Justice Weimer found that Respondents satisfied it given the “time since rendition of the judgment and the efforts made to satisfy the judgment.”³⁹ It has been more than five (5) years since Respondents’ judgment was rendered, and more than four (4) years since the trial court’s judgment was affirmed on appeal, and yet Applicant has not paid *any* of the “just compensation” awarded to Respondents.⁴⁰

Applicant erroneously suggests that this Court’s opinion, and Justice Weimer’s concurrence, erred because Respondents “did not prove ‘conscious indifference’ simply by filing their Petition,” further noting that “[n]o evidence may be introduced to support or controvert the exception of no cause of action.”⁴¹ In doing so, Applicant effectively contends that Respondents should have introduced evidence to prove conscious indifference, while simultaneously conceding that they could not have done so in the procedural posture under which the trial court dismissed Respondents’ case.⁴² In deciding an exception of no cause of action, “the well-pleaded facts in the petition must be accepted as true.”⁴³ Here, Respondents’ *Petition for Writ of Mandamus* alleged that, *inter alia*, “Plaintiffs made numerous demands upon the SWBNO for payment,” “[t]o date, over three and one-half (3 ½) years since the SELA Judgment was final, no response has been received, and no payment has been made,” and two (2) judgment debtor examinations revealed that SWBNO has not appropriated *any* funds to satisfy the judgment.⁴⁴ This Court recognized, and it was uncontested that, “the SWB did not appropriate funds to satisfy the judgment rendered in the *Lowenburg* suit,”⁴⁵ despite the passage of over five (5) years. Thus, even though the Court

³⁷ *Watson* at *12 (Weimer, J. concurring).

³⁸ *Id.*

³⁹ *Id.*

⁴⁰ See *Lowenburg v. Sewerage & Water Bd. of New Orleans*, 2019-0524, at *3 (La. App. 4 Cir. 7/29/20), --- So. 3d --- (“On March 21, 2019, the trial court rendered judgment, and found that Appellees had suffered inverse condemnation for which Appellant was liable.”).

⁴¹ Applicant’s Brief at 7.

⁴² *Id.* (noting that no evidence may be introduced on an exception of no cause of action).

⁴³ *Vince v. Metro Rediscount Co., Inc.*, 2018-2056 (La. 2/25/19), 264 So. 3d 440, 441 (*per curiam*).

⁴⁴ *Petition for Writ of Mandamus* at ¶¶ 11, 13. See *Quick v. Myers Welding and Fabricating, Inc.*, 94-282 (La. App. 3 Cir. 12/7/94), 649 So. 2d 999, 1003 (explaining the equivalence between “wanton and reckless disregard” and “conscious indifference” and noting that the “standard is a question of fact”) (citing *Potter v. First Fed. Sav. & Loan Ass’n of Scotlandville*, 615 So. 2d 318 (La. 1993)).

⁴⁵ *Watson* at *2, 4.

did not adopt a conscious indifference standard, abundant proof in the record of SWBNO's conscious indifference to paying the judgment is evident. Certainly, the amount of time alone that has passed since rendition of the judgment evidences conscious indifference. And now, instead of paying that judgment, as directed by this Court, Applicant has the gall to pursue a rehearing of this Court's 7-0 decision against it, further delaying payment, and exemplifying its continued conscious indifference to payment.

Indeed, Applicant's Brief supplies further conclusive proof of SWBNO's *continued* "conscious indifference." Therein, after claiming that SWBNO has been "chronologically paying judgments, consistent with [its] policy," Applicant contends: "Some of Plaintiffs *were* **next** in line to be addressed pursuant to [SWBNO's] policy and an *offer of settlement* would have been made promptly even in the absence of this litigation."⁴⁶ This is irrelevant to the issue on appeal and disingenuous. First, there is no proof of this in the record. Second, Applicant does not even claim that Respondents were "next in line" for *payment*, but instead, merely for an "*offer of settlement*." Effectively, Applicant suggests that SWBNO's "policy" is to wait for a judgment-creditor to come next in line, and then make an "*offer of settlement*" when there is nothing left to settle. A hypothetical and ambiguous "offer of settlement" that was never made is not "just compensation *paid*." See LA. CONST. art. I, §4(B)(1).

The Court did not adopt a conscious indifference standard for mandamus; and, in any event, Justice Weimer found SWBNO was consciously indifferent to payment of the Judgment. Therefore, SWBNO's conscious indifference to payment has already been determined.

IV. Justice Griffin's supporting concurrence based on a self-executing, mandatory provision of the Declaration of Rights, is also well founded.

Applicant's critiques of Justice Griffin's concurring opinion are equally without merit. The assertion that "if having a cause of action created by a self-executing constitutional provision subjects those judgments to enforcement via mandamus, then contract and tort claims are enforceable in this manner as well" is baseless. While LA. CONST. art. XII, § 10(A) may be self-executing, this merely means that it "establish[es] a *rule* effective without an act of the legislature."⁴⁷ The "rule" in §10(A) is one of liability, not a mandate for payment of damages *arising* from liability. In contrast, this Court has explicitly and repeatedly held that the "rule" under LA. CONST. art. I, § 4(B) is a "***self-executing* ... *command to pay*** just compensation." See, e.g.,

⁴⁶ Applicant's Brief at 7 (italicized emphasis added, other emphasis in original).

⁴⁷ See *Jacobs v. City of Bunkie*, 98-2510 (La. 5/18/99), 737 So. 2d 14, 18.

State Through Dep't of Transp. & Dev. v. Chambers Inv. Co., 595 So. 2d 598, 602 (La. 1992); *Avenal v. State*, 2003-3521 (La. 10/19/04), 886 So. 2d 1085, 1104 (same). Applicant's assertion that the U.S. Fifth Circuit resolved this issue is likewise baseless. That decision did not concern the propriety of mandamus under state law. Whether the U.S. Constitution guarantees timely payment of a federal takings judgment is irrelevant to whether the duty to pay just compensation under the Louisiana Constitution is ministerial and thus subject to mandamus, as here.

CONCLUSION

For the reasons set forth above, as well as those set forth in Respondents' previous briefing to this Court, this Honorable Court should deny Applicant Ghassan Korban's Application for Rehearing.

Respectfully Submitted,



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CERTIFICATE OF SERVICE

I hereby certify that a copy of the foregoing Brief in Opposition to Application for Rehearing of Plaintiffs-Respondents has been served upon all counsel of record and others as listed below, this 26th day of July 2024, via electronic mail and/or United States Mail, as follows:

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